

CM 334178

1942 SABOTEURS CASE TRIED BY APPOINTED MILITARY COMMISSION

VOL. IV OF XVIII

TRANSCRIPTS

IV

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STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

Before the
MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
OFFENSES AGAINST THE LAW OF WAR AND THE
ARTICLES OF WAR.

Washington, D. C.

Saturday, July 11, 1942.

458-577

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Vol IV

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STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

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Before the
MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
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Washington, D. C.

Saturday, July 11, 1942.

The Military Commission appointed by the President by order dated July 2, 1942, met, in room 5235 Department of Building, at 10:05 o'clock a. m., to try for offenses against the Law of War and Articles of War, the following persons: Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel.

PRESENT: Members of the Military Commission, as follows:

Major General Frank R. McCoy, President,
Major General Walter S. Grant,
Major General Blanton Winship,
Major General Lorenzo D. Gasser,
Brigadier General Guy V. Henry,
Brigadier General John T. Lewis,
Brigadier General John T. Kennedy.

As Trial Judge Advocates:

Honorable Francis Biddle, Attorney General of
the United States.
Major General Myron Cramer, The Judge Advocate
General, U. S. Army.

Colonel F. Granville Munson,
Colonel John M. Weir,
Colonel Erwin M. Treusch,
Major William T. Thurman,
Officers of the Judge Advocate General's
Department.

Oscar Cox, Assistant Solicitor General of the
United States.
James H. Rowe, Jr.,
Assistant to the Attorney General.

As Provost Marshal:
Brigadier General Albert L. Cox.

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As Counsel for the Accused except George John Dasch:

Colonel Cassius M. Dowell,
Colonel Kenneth Royall,
Major Lauson H. Stone,
Captain William G. Hummell.

As Counsel for the Accused George John Dasch:

Colonel Carl L. Ristine.

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P R O C E E D I N G S

The President. The Commission is open.

While you gentlemen are in the process of getting started, I should like to have a moment's talk with the Attorney General and with General Cramer.

Colonel Munson. Shall we proceed, sir, with the technical part?

The President. Yes, please.

(The Attorney General and The Judge Advocate General conversed privately with the President.

The following then occurred:)

Colonel Munson. Mr. Golding, will you hold up your right hand, please?

Do you solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by such proper authority?

Mr. Golding. I do.

Colonel Munson. All the personnel of the Commission, of the prosecution except Colonel Weir, and of the defense who were present at the close of the previous session in this case are again present, and all eight of the accused and the

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reporter are also present.

The new reporter has already been sworn as to secrecy, sir.

The Attorney General. Mr. Lanman.

Lieutenant Page. This witness has been sworn to secrecy.

Colonel Munson. The witness is reminded that he is under oath.

Mr. Lanman. Yes, sir.

CHARLES F. LANMAN

was recalled as a witness for the prosecution and, having been previously duly sworn, testified further as follows:

Colonel Royall. Mr. Attorney General, had you finished with Mr. Lanman? I did not understand.

The Attorney General. Yes, I had, Colonel Royall.

Colonel Royall. May it please the Commission, cross-examination of this witness by myself will be solely on behalf of the defendant Burger, the other defendants at this time not electing to cross-examine. That decision may be changed by subsequent developments. By so stating, I do not seek again to raise the question as to whether the testimony is competent as to the others, because we have a stipulation that I may later make a motion to strike and that the Court will dispose of that at the time you determine whether this confession itself and the other statements are admissible as to the other defendants. But the other defendants are not at this time cross-examining this witness.

CROSS EXAMINATION

Questions by Colonel Royall:

Q Mr. Lanman, as I recall your testimony, you discussed with the defendant Burger the various facts which were later

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embodied in the confession or instrument which has been offered, such discussion taking place beginning with the 20th and continuing for several days thereafter?

A Yes, sir, that is correct.

Q When was the paper introduced in evidence yesterday actually prepared?

A It was prepared over a period of several days.

Q Do you without necessarily being exactly specific about it recall what days were taken up with its preparation?

A There was a period of about four or four and a half days there taken up with its preparation.

Q I believe it is dated the 25th. Does that represent the date on which its preparation was actually completed?

A The date of the statement represents the day on which the statement was commenced--was begun. I think you will find that date was not the 25th.

Q I may be in error about that. The 23rd it is, I believe.

Do you know what date its preparation was actually completed? Was that the date it was signed?

The Attorney General. Would you care to look at the original?

Colonel Royall. Yes.

The Witness. Perhaps if I could refer to that just a moment to see that--

Colonel Royall. It would be entirely satisfactory to us to have the witness refer to the original.

(The statement was handed to the witness.)

The Witness. The statement was taken between the 23rd

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and the 26th, and then it was gone over with the defendant for errors and corrections. The corrections were made, as I believe I stated yesterday in the Court here. It was signed on the 28th, on Sunday.

Questions by Colonel Royall:

Q Mr. Lanman, was that statement dictated by a representative of the F.B.I. as the defendant Burger was talking, or what method did you follow in actually dictating it?

A As much as possible, the defendant Burger was allowed to dictate in his own words--his own phrases. There were times in there when both Mr. Fellner and myself would dictate because of the defendant's inability to express himself clearly in just exactly what he wanted to say, and we would have to have a discussion on that, and then it would be dictated.

Q But that instrument was later gone over by the defendant Burger and carefully examined, was it not, sir?

A Yes, sir, it was.

Q Before you started the preparation of that on the 23rd day of June, you had orally discussed the matter with him for two or three days before that, had you not?

A Yes, for part of that time there had been discussion.

Q Those discussions were not reduced to any definite memorandum signed by him, were they?

A No, they were not.

Q The matters embraced in the discussions from the 20th to the 23rd are included in the matters also embraced in the statement which he finally signed in general, are they not?

A Yes, sir, they are.

Q Is it a fact that a considerable part of the statement as finally signed was the result of specific questions

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and inquiries which you addressed to Burger?

A That is the basis of the entire statement.

Q Of the entire statement. Is it not a fact, Mr. Lanman, that during your entire course of inquiry the defendant Burger freely and fully answered the questions which you addressed to him?

A Yes, he did.

Q Of course, the length of the statement, at least in part, is due to the fact that you sought to get as broad a cover, as broad a field, in your inquiry as you thought material and relevant; is that right, sir?

A That is correct; yes, sir.

Q Mr. Lanman, I may have asked you about this, but do you recall whether Burger's door was unlocked when you entered his room?

A I am sorry, sir; I couldn't testify to that; I don't know.

The Attorney General. May it please the Commission, we now have one set of the photographs, and we shall have more very shortly (handing photographs to the President.)

Colonel Royall. These are photographs of the defendants?

The Attorney General. Yes.

Colonel Royall. That is all right.

Questions by Colonel Royall:

Q It was a fact, was it not, Mr. Lanman, that Mr. Burger stated that he had been expecting the F.B.I. to come and had received a communication which so indicated, was it not?

A I recall very definitely that he stated that he was expecting the F.B.I. to come.

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Q Did he tell you of having received a communication from one of the other defendants to that effect?

A I recall an instance about a note that was left at the hotel for him.

Q Did he tell you that he had remained at the hotel room constantly or almost constantly from the time he received the note until your arrival?

A I don't recall his exact words, but in substance that is what he told me.

Q In giving this statement or these statements which were given from time to time by the defendant Burger, he made no request for any reward or any other material consideration of any kind, did he?

A No, he didn't.

Q In other words, they were given freely and voluntarily and fully?

A Yes, sir.

Q He did not indicate in giving those statements that he was acting under any stress or fear, did he?

A No, he didn't.

Q This information was given to you by Burger on the 20th, before any of the other defendants were apprehended, was it not, sir?

A Well, I can't answer that about any of the other defendants, sir.

Q Well, of course, the defendant Dasch was there in your custody, or you had him with you in some way, but aside from Dasch is it not a fact that Burger made those statements before any of the other defendants had been apprehended?

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A There had been, I believe, two other defendants apprehended.

Q On the 20th?

A If I am correct in that, I believe so; that was the date.

Q On the same day?

A On the same day.

Q But none had been apprehended before that time?

A No, sir, not that I knew of.

Q Do you recall whether Burger knew anything about their apprehension when you first saw him?

A No, he didn't.

Q So, as far as he knew, none had been apprehended, and he still talked with you freely and fully?

A Yes, he did.

Q I notice in the confession which was offered in evidence a very full and accurate description of these various other defendants. Do you recall at what stage of your inquiry that information was first given you by the defendant Burger?

A I would say it was about midway of the work in connection with the preparation of this statement.

Q Do you recall when Burger first told you of his method of entering the United States originally; that is, that he had entered it regularly, within the immigration quota and as he was entitled by law to do? Do you recall when he first made that statement to you?

A Why, I believe the information of that sort was given probably the first evening we talked with him, although I wouldn't want to be definite on that point.

Q I understand, Mr. Lanman, that in some instances you

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will have to give me your best impression or recollection of what occurred.

A Surely.

Q Do you recall when he first told you that he left America for Germany because of his difficulty in obtaining employment during the depression? Do you remember when that statement was first made to you?

A Probably the first or second day, maybe the third day, of the questioning; along in that period.

Q With reference to the description which he gave you of the other defendants, did you find when you later saw those defendants that that description was an accurate one in most particulars?

A I have not had any opportunity to look over the other subjects in the case except here in the courtroom, and I can't tell exactly from where I am sitting here just exactly how well that fits.

Q You have not given any study to that?

A I have not given any study to that at all.

Q Do you recall when he, the defendant Burger, first told you of the treatment which he had been given by the Nazis in Germany, of his confinement in the concentration camp, and of his narrow escape from the Roehm purge? Do you remember when he first told you that?

A Yes, that was very shortly after the start of the questioning of Burger, the first or second day. We went over considerable of this in that time.

Q Was it at approximately the same time that he told you that he had formulated a plan to escape from Germany at the first opportunity he had?

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A Approximately, yes, sir.

Q He told you that at that time. Was it at that time that he further told you that that desire to escape from Germany and return to America was intensified when America entered the war? I believe that appears in his statement.

A If I am correct in that, sir, it was several days later that that particular point was brought out.

Q Of course, you had to cover the situation hurriedly at first and then elaborate later; that is true, is it not?

A That is right, yes.

Q Did he tell you at that time or about the time of your first conversation of his various efforts or plans to get out of Germany before this present situation arose?

A At the beginning he briefly covered that, as I recall it, and later on, when this statement was being prepared, he elaborated a little more in detail, which he included in the statement.

Q Did he from the outset and during your entire course of conversation state that it was never his intention in entering America to carry out the plan which was given him in Germany?

A Yes, he did.

Q He said that from the outset and continued it throughout your entire conversation with him?

A Yes, he did.

Q Did he also tell you of his plan to expose this plot and make possible the apprehension of its participants? Did he tell you that at first and then elaborate on it further?

A During the course of the questioning at the start he explained something of that and elaborated on it later.

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Q Did he at that time tell you of his insistence upon using his own name instead of some alias throughout this matter?

A Yes, he did.

Q At what stage in the questioning did he learn, if ever, that you had found the material and boxes and things? Was that about the latter part of it?

A I don't recall exactly when that was, sir, but it was sometime after we started questioning him before he knew that.

Q Before he obtained that information, he had told you of the traces he had left on the beach to enable its discovery, had he not?

A Yes, he had.

Q He told you of the various articles which he had left on the beach, did he not?

A Yes, he did.

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Q And he told you that in burying the sack he had left it slightly exposed?

A Yes.

Q And he told you of dragging the sack across the beach so as to leave a visible trace?

A Yes.

Q And told you of leaving certain articles of clothing and other articles along the beach as he went off the beach, did he not?

A Yes.

Q Did you have occasion at any time to go on the beach and observe the situation there, or is your information there solely from the Coast Guard?

A My information about the beach is solely from the Coast Guard; or, I might say, solely hearsay.

Q The bag was of such a size that a person could have carried it without dragging it, if he so desired?

A I imagine so.

Q Among the articles that he told you he had left along the beach in order to make detection easy, he told you of the cigarettes and a partially-filled bottle of Schnapps?

A Yes.

Q Of the coat?

A Yes.

Q And the cap?

A Yes, sir.

Q And one or two other matters, if you recall. I do not recall them right now.

A I believe he stated that the other things he left

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there were some small objects which he himself could not recall.

Q With reference to the information which he gave you about the details of the plan and the method of preventing sabotage, did he give you that information from the outset, from time to time, and elaborate on it later?

A He gave us, after we arrived at the office on the evening of Saturday, any of these details that we asked him; and we asked him that evening the exact quantity of the material we talked about. I do not recall what it covered that particular evening.

Q Just as an illustration, I believe he told you a method of preventing sabotage of certain manufacturing plants and called to your attention a method that could be used by a saboteur in entering a plant. Do you recall when he first gave you that information?

A I do not recall having been told that information, sir.

Q I may be in error. It is hard to recall all these things. I know I have difficulty. I made reference to this statement in the first paragraph on your page 40, about the air openings and the method of preventing sabotage.

A If I may read it. (After referring to document) This has reference to plants in Germany, sir.

Q I see. It was not clear to me whether it meant plants here or whether the plants he told you about were of similar type.

A This particular paragraph has reference to air vents in plants in Germany.

Q But I believe he gave that information, as stated

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in the instrument itself, in order that you might use it to prevent possible sabotage of industries here, did he not?

A That may have been his intentions.

Q Does it not so state in the first of that paragraph?

A (Reading) "George and I also noticed numerous other means of easy entrance into the plant, and my purpose in stating these at this time is that if any means are found to sabotage any of the industries, this information I am furnishing may be of some help."

My information was that had reference to plants in Germany.

Q He would not be giving you information to help to prevent sabotage in Germany, would he?

A I believe you will find, if you look through the statement further, that there is reference to something about that in the statement.

Q Mr. Lanman, he also drew these diagrams as to the various types of explosives and detonators, did he not?

A Yes, sir; he did.

Q Did you recall when he first gave you information about that, in general, before he became specific?

A I believe that was after the statement itself was actually begun.

Q I see. Had he indicated previously to you that he would give you any details about that if you requested?

A As I recall it, he had; yes, sir.

Q Do you remember at what stage he gave you information about the possibility that German aircraft may have come up, and told you where they probably would land?

A I cannot recall definitely, sir, just exactly when that was.

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Q Do you recall when he described to you the method of refueling submarines?

A It would be very hard to state very closely, because this covers a good deal of time.

Q That type of information was given by him freely, was it not?

A Yes, sir; it was.

Q And it was given by him to you as a result of your inquiries to obtain information that might prevent sabotage and espionage?

The Attorney General. I do not want to object, but it does seem to me that counsel is asking a pretty conclusive question.

Colonel Royall. I think I am, sir.

The Attorney General. I do not mind your leading him to bring out ordinary information, but I do not think you should lead in that manner.

Questions by Colonel Royall:

Q You did question Mr. Burger considerably about matters connected with possible sabotage and espionage in this country, did you not?

A The questioning was for the purpose of finding out what he knew and what he had engaged in and the method of his entry into the United States.

Q Did you not make some additional inquiries to find out what might happen in the future?

A Naturally that was the object in mind, of course, when we were questioning him.

Q When you made those requests he gave you the information fully and frankly?

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A Yes; he did.

Q As a matter of curiosity, have you ever taken advantage of his offer to plot the course of the submarine, which he stated he would be glad to do?

A Briefly, one day at the office when we looked at a map, and it was a very sketchy outline.

Colonel Royall. That is all.

The President. Are there any questions by the Commission?
(No response) There seem to be none.

The Attorney General. I am going to ask a few additional questions, with the Commission's permission.

The President. Do you wish to ask questions on this cross-examination?

The Attorney General. Yes, sir, but I think they will not be objected to. They are more or less matters to be admitted.

REDIRECT EXAMINATION

Questions by the Attorney General:

Q Mr. Lanman, I show you an exhibit marked P-87 for identification, and ask you whether this was one of the objects you found in Burger's room when you searched it. If you do not remember, say no. If you do remember, say yes.

A Yes. That was found among Burger's effects.

Q Did Burger identify it? Did you show it to him?

A Yes; he did. He identified that.

Q What did he say it was?

A He stated it was a letter left for him by George Dasch.

The Attorney General. If there is no objection, I will

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offer this letter in evidence.

Colonel Royall. There is no objection on behalf of the defendant Burger--still reserving the objection of other defendants.

The Attorney General. I will hand the letter up for the Commission to read. It really comes up a little later.

The President. May I ask if this is the letter to which you referred yesterday and which was objected to at that time?

The Attorney General. Yes, sir. I do not think that at this time there is any objection to its going in.

I think I will read this aloud, General McCoy, if I may. I think there is no objection to it. It is written on the letterhead of the Hotel Governor Clinton, and is dated June 19, 1942 (reading):

EXHIBIT P-87

"Dear Pete:

"Sorry for not have been able to see you before I left. I came to the realization to go to Washington and finish that which we have started so far.

"I'm leaving you, believing that you take good care of yourself and also of the other boys. You may rest assured, that I shall try to straighten everything out to the very best possibility. My bag and clothes I'll put into your room. Your hotel Bill is paid by me, including this day. If anything extra ordinary should happen, I'll get in touch with you directly.

"Until later,

"I'm your sincere friend,

"George."

It is initialed by the witness.

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(Letter dated June 19, 1942, from "George" to "Pete", was marked P-87 and received in evidence.)

The Attorney General. May it please the Commission, it has been stipulated by counsel that the defendants were apprehended at the following times:

George John Dasch was taken into protective custody on the 19th of June, 1942, at 10:30 a. m. He was actually arrested at 8 p. m. on the 24th of June, 1942.

Richard Quirin was arrested on June 20, 1942, at 5 p. m.

Heinrich Harm Heinck was arrested on June 20, 1942, at 5:15 p. m.

Ernest Peter Burger was arrested on June 20, 1942, at 5:30 p. m.

Edward John Kerling was arrested on June 23, 1942, at 10 p. m.

Werner Thiel was arrested on June 23, 1942, at 11:30 p. m.

Herbert Haupt was arrested on June 27, 1942, at 9:08 a. m.

Hermann Neubauser was arrested on June 27, 1942, at 6:45 p. m.

(At this point Colonel Weir, Assistant Trial Judge Advocate, entered the court room.)

Counsel have agreed to the introduction of some photographs which I will now have marked.

Colonel Royall. Are you putting that memorandum of apprehension in as an exhibit, or merely reading it?

The Attorney General. I am merely reading it.

The President. May I ask if there is any indication on that paper as to where those arrests were made?

The Attorney General. No, sir; there is not. That will

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develop as each one comes up. I was slightly inaccurate in my statement yesterday, and I did not want any inaccuracy to go into the record.

(Photographs handed to the reporter were marked P-88 to P-91, inclusive, for identification.)

The President. Colonel Ristine, I find that I sometimes overlook inquiring of you whether or not you wish to cross-examine. If I should fail to ask you, will you assert yourself?

Colonel Ristine. Yes, sir.

The Attorney General. I offer in evidence photographs marked P-88 to P-91, inclusive. They are photographs, first, the United States Coast Guard observation tower, taken from a spot on the beach east of the tower, at which point it was necessary to turn inland to reach the spot where the materials were buried.

Exhibit P-89 is an eastern panorama taken from the top of the United States Coast Guard observation tower at Amagansett, Long Island, looking towards the spot at which the recovered material was located.

P-90 shows the actual location of the spot where the material was buried subsequent to its removal. The road shown in the foreground terminates directly at the left-hand border of the picture.

P-91--I will not read all the description--is a scene depicting a wooden cross located at the edge of a sand dune fronting on the beach between the Coast Guard observation tower and the spot at which the buried material was recovered.

(Photographs marked P-88 to P-91 inclusive, were received in evidence.)

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Colonel Royall. May we have an opportunity, when the Commission is through with them, to examine those photographs? There is no objection to their admission, but we want an opportunity to see them.

The President. Yes, sir.

Questions by Colonel Ristine:

Q Mr. Lanman, do you remember at what part of the questioning of Burger it developed that he and Dasch were working together toward this common end of communicating these matters?

A As I recall it, it was not very long after the questioning started. The exact period of time I could not possibly recall.

Q Did he advise you that Dasch had gone to Washington for the purpose of communicating with the FBI?

A Yes, subsequently, after the questioning started, he did.

Q And did he advise you also that before coming to Washington he had talked over the telephone with the FBI in New York?

A He stated that Dasch had talked over the telephone.

Q That is what I meant.

A Yes.

Q And he also, I believe, explained that he and Dasch thought it was better to communicate directly with the Washington office than the New York office, didn't he?

A Yes. That is explained in the statement.

Q And what was that explanation, if you recall?

A That the local offices of the Federal Bureau of

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Investigation--he had been told, rather, at the school in Germany that the local offices of the Federal Bureau of Investigation were watched by Gestapo agents and that they did not want to be seen going into the local office.

Q He did disclose to you that he and Dasch had an understanding before they left Germany or France that they would carry out this plan, did he not?

The Attorney General. Now, wait. I object to that. It is a conclusion from the evidence. There is no evidence of any understanding. If the question is directed specifically to what was said I have no objection, but I have no recollection of any such understanding as that.

The President. I will sustain the objection, unless you have any comment to make or unless you want to reframe the question, Colonel Ristine.

Colonel Ristine. It just seemed to me to be proper cross-examination.

The Attorney General. It is not improper, but there is no evidence to show any such understanding, and the question indicates that there is evidence of that. If you refer to any part of the confession or any specific evidence, it would be permissible, but this seems to me to be a conclusion as contained in the question not warranted by the evidence.

Colonel Ristine. My question is directed at this long interrogation of Burger, that during the time he was interrogated and questioned did he disclose that he had this understanding before they arrived in this country.

Now, I would like to have an understanding. I do not understand that I am precluded in my cross-examination to just

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such portions as were reduced to writing in this statement as offered. When we consider that the interrogations were conducted over a period of several days, obviously everything that was asked and answered was not included in the written document.

Am I correct in that premise?

The Attorney General. I have no objection to your asking about anything that took place. I have objection to your concluding results which do not seem to be warranted by the evidence. Perhaps if the reporter will repeat the question you will see what I mean.

The President. Will you reframe your question and then we will see if the Attorney General objects to it.

Questions by Colonel Ristine:

Q Could you tell me at what time in the interrogations of Burger it was disclosed to you that Burger and Dasch had an understanding as between themselves that upon arrival in the United States they would carry out this plan of divulging everything to the FBI or other proper authorities?

A May I refer to this statement, sir?

Q Yes, sir. On page 48 there is some reference--
Colonel Royall. It is on 49.

Colonel Ristine. There is some reference to it on page 48.

Colonel Royall. It is actually on 49.

Colonel Ristine. Actually on 49, I think, there is some reference to it there.

A The only information furnished by Burger in connection with any understandings are contained in this statement.

Colonel Ristine. Suppose you read the first paragraph on

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49.

The Witness (reading):

"The cause of this argument was that George Dasch had stated that he saw no reason why the group should engage in any activities whatsoever in the United States for three or four months after their arrival there. I am sure he had in mind the fact that this would give him sufficient time to expose the plan. Kappe, on the other hand, ordered the group immediately after our arrival in the United States to begin work in a small way. Another cause of the argument was that George wanted me to go with him, while Kappe wanted me to go with Henry. The reason George wanted me to be with him was, as previously stated, we had, without openly confiding in each other, arrived at an understanding as to each other's attitude toward the present regime in Germany."

Do you want me to continue, sir?

Colonel Ristine. Yes, that paragraph.

The Witness (continuing reading):

"Kappe had instructed that I should go with Henry Heinck and that George should go with Richard Quirien. However, George told Kappe that he had no confidence in me, and did not believe that I should be allowed to go with Henry. This caused another argument between Kappe and George, but George won, and it was agreed that I was to accompany George. I was to travel with George when we arrived in the United States, prior to our establishing headquarters in Chicago."

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Questions by Colonel Ristine:

Q Now, I take it there was no effort made to reduce to writing everything that was said with respect to the subject matter dealt with in that paragraph, is that correct?

A As much as possible, sir; we got everything in there that we could.

Q Yes, but you did not attempt to reduce to writing everything that was said?

A That would be obviously impossible. It would make too long a statement.

Q Yes.

A With a lot of irrelevant matter.

Q At what time in the interrogation did Mr. Burger tell you that Dasch had confided in and advised some person in Paris of their intentions when they arrived in the United States?

A I do not recall exactly what period of time during the questioning that was.

Q But that disclosure was made during the interrogation of Burger?

A It is contained in the statement.

Q Yes.

A It is a statement that Burger made concerning Dasch.

Q Could you give us the statement that was made respecting what Dasch had done in regard to disclosing his intentions in Paris?

A It is in the statement here and I would have to look for it.

Q I realize there is a statement with respect to that subject. I thought maybe you could give us your recollection

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of it.

The President. Can you hasten the proceeding to the extent of giving him the reference in the statement?

The Witness. I have it right here, Mr. President.

Colonel Ristine. I do not have it.

The President. All right, sir.

Colonel Ristine. I did not have a copy of the statement to work with last night.

The Witness. Do you wish me to read this portion?

Colonel Ristine. Yes.

The Witness. It is right here on page 47 of the statement.

Colonel Ristine. Yes, that is the reference I had in mind.

The Witness (reading):

"George Dasch had an engagement with a man he pointed out to me and told me was an American journalist who was to be exchanged with German newspapermen and who was to come to the United States shortly after we arrived. It is possible that this man's name was Von Scheibie. George told me he talked with this man about his plan to come to the F.B.I. upon George Dasch's arrival in the United States, and disclose all of this information and he wanted to give the F.B.I. this man's name to prove he had the intention of coming to the F.B.I. even before he arrived here."

Questions by Colonel Ristine:

Q Does not that, in connection with what was on page 49, disclose to you that Dasch and Burger had an understanding

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in Paris to do just what they did after their arrival in the United States.

A I think if you read the statement further on in here, this was told by Dasch to Burger after their arrival in the United States. At least, that is my understanding.

Q You think that is disclosed in the entire statement?

A I cannot recall exactly where in here, but I recall this, that the statement definitely says that there was no discussion concerning their plans until after their arrival in the United States.

Q You have reference to the detailed method of carrying the matter out rather than the intention to carry it out, do you not?

A I have reference to any discussion at all between the two men concerning what they intended to do when they arrived in the United States as to reporting this matter to the F.B.I.

The Attorney General. May it please the Commission, I do not see where we get anywhere with disputes as to where the confession took place. We can look at the confession we have, and of course counsel can ask any question he wants which do not appear, but here we have a dispute between counsel and the witness as to what is in the statement, when he can refer to any part he wants and be sure about it.

Colonel Ristine. I think the Attorney General is confused about the purpose of my question. Obviously, everything that was said was not reduced to writing. There are frequent references in this statement to conversations between Dasch and Burger in Germany and France and after they came back to the United States. I was attempting to show by this witness

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who conducted these interrogations that it was clearly shown collectively that they formulated the plan before they came to the United States, not confining myself to the written statement alone but to everything that is in the statement, together with everything that was said as between the parties before this statement was written.

The President. Proceed, Colonel Ristine.

Questions by Colonel Ristine:

Q Would not you say that from the interrogations you made and taking into consideration all the reference in the statement respecting the conversations that Dasch and Burger had, together with all of the statements insofar as they are set out in the written statement, that they had formulated the plan before they came to the United States that they would not carry out the mission?

The Attorney General. I object. The question is so obviously objectionable. He is asked practically as a juror to decide his conclusion on certain evidence. Now, the sole question is what did Burger say to you. He has asked as if he were a member of the Commission what his opinion is with respect to what was said to him. I think it is most inappropriate, and I object to it.

Colonel Ristine. If the Commission please, I might make a suggestion here. If I could be furnished a copy of this statement and given an opportunity to study it carefully, I could detail what I wish to inquire into more specifically if the cross-examination could be deferred until, we might say, Monday.

The Attorney General. I am exceedingly sorry you did not have a copy. There are plenty of them available, Colonel Ristine. I will give you one at any time. I do not like deferring these matters too long, but anything that is convenient--

Colonel Ristine. I would be glad to defer it.

The President. The Commission feels that if you can continue your questions along what might be called proper lines it would be unwise to defer this questioning. You might reframe your question so a conclusion would not be called for. However, I do not want in any way to interfere with your being able to properly present your side of the case, but this is cross-examination on a statement which has been read and which we have all heard.

Colonel Ristine. Yes, sir.

The President. And which you can take the time now to cover in the presence of the Commission, if you wish, or we will give you a five-minute recess, if you prefer, but I think that you can properly reach your objectives step by step at the same time making your point as to full and free evidence on cross-examination.

Questions by Colonel Ristine:

Q Do you now recall what Burger told you about some of the walks he had with Dasch in which they discussed what they would do, provided they left Germany for the United States?

A I do not recall any details about any discussion of that nature at all, sir.

Q Do you recall what was said that gave rise to the references to those conversations that are contained in this

report?

The President. Will you refer to the page of the report, if you can, please?

Colonel Ristine. I cannot. I am conducting the examination from my memory of what was read.

The President. If you wish, we will defer it, but I think we can give you a recess of a few minutes until you get a copy. We have heard it and you have heard it and it seems to me that this question you ask is one that you can find if you have a copy, and I think you might request the Attorney General to furnish you with a copy now.

The Attorney General. Certainly ~~he~~ will.

The President. The Commission will take a recess of five minutes.

The Commission will be closed.

(The Commission was then closed. When it reopened, the following occurred:)

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The President. Are all the personnel present?

Colonel Munson. All the personnel of the Commission, of the prosecution, and of the defense except Colonel Royall who were present when the recess was taken are again present. All eight of the accused and the reporter are also present.

The President. The Commission is open. We shall wait for Colonel Royall to appear. I am conscious of the fact that we cannot always carry out our recess reasons in a short time.

Colonel Munson. The record will please note that Colonel Royall is now present.

The President. Proceed, Colonel Ristine.

Colonel Munson. The witness is reminded that he is still under oath.

The Witness. Yes, sir.

CROSS-EXAMINATION

Questions by Colonel Ristine:

Q Mr. Burger, I believe, told you that in his talks with Dasch prior to coming to the United States they had exchanged views about the hardships they had suffered in Germany? You recollect that, do you not?

A I don't recall exactly his stating it that way, sir. Have you any reference to any particular part of the statement here?

Q I have not with respect to that. That was merely leading up to a matter which I do have a reference to.

A My first recollection about the hardships in Germany was given by Dasch in the back of the statement here, where Burger and Dasch had a conversation over the week end in New York City.

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Q On page 33--it is page 32 here, but I believe it was said that this was misnumbered--the second full paragraph on the page starts out:

"It was during one of these tests conducted by George Dasch."

Do you have that paragraph?

A Yes, sir.

The President. Pardon me. May I ask the Attorney General if the confession as spread on the record is misnumbered?

The Attorney General. No.

Colonel Ristine. This copy, I understood, was misnumbered, Mr. President.

The President. I just want to make sure that we do not have any further misunderstandings about the numbered pages.

Colonel Royall. May I clarify that?

The President. Please do.

Colonel Royall. The copy given us bore no numbers at all, and in running through it hurriedly, in numbering it, I personally made a mistake in one number, and we have been using our memoranda based on this. The one introduced in evidence is correctly numbered.

The President. I wonder if that could be made available to the counsel.

The Attorney General. The witness has it.

The Witness. The original is right here, sir.

The President. Possibly that could be used by the counsel and then handed to the witness, just to avoid this constant series of corrections as to numbered pages.

The Attorney General. I now have a correctly numbered copy for counsel and the witness.

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The Witness. Thank you, sir.

Questions by Colonel Ristine:

Q I refer to page 33, the second full paragraph.

A Yes, sir.

Q Could you read that paragraph and refresh your recollection?

A Do you wish me to read it aloud?

Q Yes, I think it would be well to read it aloud.

A "It was during one of these tests conducted by George Dasch that I first got together with him and began to get some idea that he was not the absolute Nazi which he pretended to be. This particular incident was during the first week in school--some time between April 13th and 17th. I also noticed that from this time on, Dasch had difficulty with the course and had considerable difficulty with the instructors. He frequently came to classes late, and insulted the instructors by his behavior. He would keep his hands in his pocket when it was necessary to stand at attention and 'Heil Hitler.' As a result of this, everyone became suspicious of Dasch. It appeared to me that he was attempting to find out just how far he could go against the authorities at the school without being fired. Dasch later explained the situation to me as being caused by the fact that his nerves were beginning to upset him and that he couldn't force himself to go through with something that he really hated and despised."

Q Did that in connection with the other matters we have referred to disclose to you an intention on Burger's and

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Dasch's part not to carry out the program when they arrived in this country?

The Attorney General. I object to that most vigorously. The witness was asked what was disclosed to him, what was told to him. This witness cannot be asked what his conclusion was; that is a matter for the Commission to decide.

Colonel Ristine. If the Commission please, I will withdraw that question, and with the Commission's permission I will withdraw the objections heretofore made on behalf of Mr. Dasch to the competency of this statement or confession of Mr. Burger.

Was there more than one letter found in Mr. Burger's possession or in his room at the time of the search? There were two letters, were there not?

The Attorney General. One was found in the room.

The President. I think you may ask the question.

Colonel Ristine. There was a second letter?

The President. Ask the witness.

Question by Colonel Ristine:

Q There was a second letter addressed to Mr. Burger from Mr. Dasch, was there not?

A Not to my knowledge, sir.

Colonel Ristine. May I be permitted to ask the Attorney General? I think there is no question.

The President. I think you may confer informally with the Attorney General and then ask your question.

Is there any objection to that, Colonel Royall?

Colonel Royall. None whatsoever.

(Colonel Ristine conferred privately with the Attorney General.)

Colonel Ristine. That is all the cross-examination.

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Colonel Royall. I should like to ask one question.

The President. Colonel Royall.

RECROSS EXAMINATION

Questions by Colonel Royall:

Q Mr. Lanman, you were asked by Colonel Histine a number of questions as to exactly what transpired or what Burger said transpired at various stages of his activities. I believe Burger did state definitely--

The President. On what page, Colonel?

Colonel Royall. On page 49 and, I believe, elsewhere.

Questions by Colonel Royall:

Q (Continuing) --that he, Burger, had definitely decided in Germany that he did not intend to carry this plan out and that, without openly confiding in each other, there was some understanding between Dasch and himself as to their attitude toward Germany?

A Yes, sir; just as we have in the statement right here.

Q And Burger made entirely definite in his statement the fact that he had no intention of carrying out this plan, did he not?

A Have you any reference to a particular page in the statement here?

Q I believe we covered that before. If you do not recall it, it is unnecessary to do so again.

A I don't recall any exact phraseology. I would like to find it in the statement here.

Q Well, it is in the statement, if it would be of any service to you.

Colonel Royall. I do not want to delay the Commission

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with this, because I covered it in previous examination. I merely asked about it again in order to relate it to the questions that had been asked here.

At the Commission's request, at any time, we can give or point out those pages in the statement.

The President. I think it would be well, since you are making reference to the paper in question, that it be definitely stated what page number you have reference to.

Colonel Royall. The Commission does not desire me to call attention to those pages now?

The President. You can have it looked up and inform us at the proper time.

Colonel Royall. All right, sir.

Colonel Ristine. May I ask one or two other questions?

The President. Colonel Ristine.

CROSS-EXAMINATION

Questions by Colonel Ristine:

Q It is a fact that Mr. Dasch had communicated with and was in the protective custody of the F.B.I. in Washington before any others of the group were apprehended?

The Attorney General. If you know.

The Witness. Of my own personal knowledge, I do not know, sir.

The Attorney General. Is there anything else?

Colonel Royall. I might find those pages and clear the record, in order to save the witness from coming back. However, I think I had better defer that.

The Attorney General. All right, Mr. Lanman. Leave the original statement with the reporter.

Counsel for the defendant Dasch has asked me to recall

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the witness Cullen. With the Commission's permission, I shall now do that.

Lieutenant Page. This witness has been sworn as to secrecy.

Colonel Royall. May it please the Commission, I find that the reference in the statement to the intention of Burger appears in one or two places, but specifically it appears on the last page of the statement, to the effect:

"I never had any intention of carrying out the orders given me by officials of the German Government."

That is the statement about which I was questioning the witness Lanman.

Before another witness is sworn, I have another matter. I want to make certain that our stipulation as to the objection and motion to strike on behalf of other defendants applies to the testimony given on both the cross-examination by Burger and the cross-examination by Dasch of the witness Lanman and that the Court is still reserving its decision on the matter of competency as to the other defendants.

The President. That lies, as I take it, for the defendants excepting--

Colonel Royall. Burger and Dasch.

The President. Is that agreed to? I understand that Colonel Ristine made another reservation that is not included in the statement of Colonel Royall with regard to the defendants whom he is representing.

Colonel Ristine. Yes, sir.

The President. You withdrew the stipulation, as I understood?

Colonel Ristine. I withdrew the objection as to the state-

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ment or confession of Burger.

The President. As relating to your client, Dasch.

(The witness Cullen was recalled.)

Colonel Manson. The witness is reminded that he is still under oath.

The Witness. Yes, sir.

The Attorney General. Colonel Ristine says that he has not had a chance to confer with this witness. This is a Government witness. I do not know why the Colonel should have a chance to confer with him. The witness is now here, and Colonel Ristine can ask him any question he wants to ask.

If the Commission would prefer to have him confer with the witness, I see no objection, but I think it is a little unusual.

Colonel Ristine. This witness was subpoenaed by the defendant whom I represent. On two occasions I attempted to confer with this witness, but my conference was interrupted because of objections to my conferring with the witness, who had been used by the prosecution.

After I have had an opportunity to confer with the witness, I may desire to put him on the stand again; but I do not desire at this time to ask any further questions.

The Attorney General. Did you not confer with him yesterday?

Colonel Ristine. Mr. Attorney General, I started a conference twice, but in the midst of each conference I was advised and informed that I could not go further with the conference; and after the matter was straightened out, I did not have another opportunity to talk to the witness.

The Attorney General. I will do whatever the Commission

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wants; it makes no difference to me.

The President. Is that statement accepted by you?

The Attorney General. Why, of course, if Colonel Ristine says so.

The President. Do you have any objection to his conferring with the witness at this time?

The Attorney General. No.

The President. We will give you an opportunity. How long do you wish? Can you do it at this time?

Colonel Ristine. Oh, certainly. I would say fifteen minutes would be ample time.

The President. All right. The Commission will recess for that purpose.

The Attorney General. I do not want to raise difficulties, but time is precious. Would it be appropriate for Colonel Ristine to have the conference at recess?

The President. Have you another witness whom you could call?

The Attorney General. Oh, yes; we have a number of witnesses whom we can call.

Colonel Ristine. That would be satisfactory; and I should like to confer with the witness with my client, Mr. Dasch.

The President. All right. We will give you an opportunity. The witness will be excused for that purpose and will remain at the disposition of the Commission.

The Attorney General. All right.

May it please the Commission, Colonel Royall, representing Burger, and the prosecution stipulate that the knife referred to by the witness B. Downey Rice was not the knife of the defendant Burger but was the knife--

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Colonel Royall (interposing). We will not stipulate whose it was; just that it was not the knife of Burger.

The Attorney General. All right; it was not the knife of Burger and was not found in Burger's room.

We will call Mr. Wills.

Lieutenant Page. Mr. N. D. Wills. This witness has not been sworn as to secrecy.

Colonel Munson. Two oaths are administered to each witness. The first is an oath of secrecy. You understand, before taking that oath, that violation of the oath of secrecy may subject you to severe penalties?

Mr. Wills. Yes, sir.

Colonel Munson. Do you solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by proper authority?

Mr. Wills. I do.

Colonel Munson. Do you swear that the evidence you shall give in the case now on hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Wills. I do.

NORVAL D. WILLS

was called as a witness for the prosecution and testified as follows:

Colonel Munson. Will you please state your name, residence or office address, and occupation?

The Witness. My name is Norval D. Wills. I am a special agent of the Federal Bureau of Investigation, assigned to the New York Division.

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DIRECT EXAMINATION

Questions by the Attorney General:

Q Mr. Wills, can you identify the defendant Dasch?

A Yes, sir.

Q Please do so.

(The defendant Dasch walked toward the witness.)

Q Is that Dasch?

A That is Dasch, yes, sir.

Q Mr. Wills, were you in Washington on June 25, 1942?

A Yes, sir, I was.

Q At the office of the Federal Bureau of Investigation?

A Yes, sir, I was.

Q Do you remember seeing Dasch at that time?

A Yes, sir, I did.

Q What did Dasch have with him when you saw him?

A On the morning of June 25, 1942, at the time we came into room number 2250 of the Department of Justice Building, the defendant Dasch had at that time with him a brief bag containing \$82,550.

Q Wait just a moment. Who else was present when Dasch came in?

A At that time Special Agent Duane L. Traynor and Special Agent Frank G. Johnstone were present.

Q Who brought Dasch in?

A Special Agent Frank G. Johnstone and myself.

Q Where had you brought him from?

A From room 351 of the Mayflower Hotel.

Q Was that as a result of a communication made by Dasch to one of the agents by telephone?

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A I beg your pardon?

Q Why did you go to the Mayflower Hotel?

A We were with Dasch all during that evening.

Q Oh, I see.

A That night. In the morning, when we left the Mayflower Hotel, we accompanied Dasch to the Department of Justice Building.

The Attorney General. I will ask to have this brief case marked.

(A Brief Case was marked as
Exhibit P-92 for identification.)

Questions by the Attorney General:

Q Dasch, you say, had a brief case with him?

A Yes, sir.

Q I show you Exhibit P-92 and ask you if it is the brief case that Dasch had with him.

A Yes, sir, this is the brief case.

Q This is a photostat of the brief case, also marked P-92?

A Yes, sir.

The Attorney General. I offer this photograph in evidence.

(Photograph of Exhibit P-92 was
offered in evidence.)

Questions by the Attorney General:

Q Did you examine the brief case?

A Yes, sir, I did.

Q What did you find it contained?

A At the time he brought it into room 2250, it was locked, and he was asked to unlock the brief case, which he did, and at that time it was opened, and it was observed to contain

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several manila envelopes and one white letter-sized envelope.

Q Did you open the envelopes?

A Yes, sir.

Q What did the envelopes contain?

A The envelopes contained a total of \$82,550.

Q In what denominations?

A Fifty-dollar bills.

Q In American money?

A In American money.

Q What did you do with the money?

A That was counted right in the office, and it was-- the original binders were left on the money, and it was initialed at that time by Special Agent Johnstone and me, who had counted the money. It was placed back in the envelopes and sealed with a sticker bearing the initials of Dasch, Johnstone, and myself.

Q Did you take any other money from Dasch?

A Yes, sir.

Q How much?

A He had on his person at that time a total of \$160.17, which he turned over to me.

Q What did you do with that?

A That was likewise placed in an envelope and carried with us to New York City.

Q Did Dasch say to you where he got the money contained in the brief case?

Colonel Royall. May it please the Commission, I think I had better have a stipulation again here. We desire to object to any statements made by Dasch, so far as they relate to any of the other seven defendants. This, of course, is in line with

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the objection previously made, and I should like it understood that the same stipulation applies throughout and that the Commission will, when it deems it advisable, pass upon the admission of that as to the other defendants.

The Attorney General. All right.

The President. That is accepted and will be made a matter of record.

Question by the Attorney General:

Q Will you answer the question?

A May I have the question repeated?

The Attorney General. Will you please read the question, Mr. Reporter?

The Reporter (reading):

"Question. Did Dasch say to you where he got the money contained in the brief case?"

The Witness. He did. Dasch stated that that money was part of the money that had been given to him by Lieutenant Kappe.

Questions by the Attorney General:

Q Who was Lieutenant Kappe?

A Lieutenant Kappe was associated with the German high command and was the one who had interested Dasch in this sabotage school.

Q Did Dasch make a statement to you of various matters that had occurred?

A Yes, sir.

Q What date was that? I will show you a statement.

The Attorney General. I will ask to have this statement and the addenda to the statement marked as separate exhibits.

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(Statement of defendant Dasch was marked as Exhibit P-93 for identification.)

(Addenda to statement of defendant Dasch was marked as Exhibit P-94 for identification.)

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Questions by the Attorney General:

Q I show you an exhibit marked for identification P-93 and ask you what it is.

A This is a statement dated July 2nd, 1942, which was shown to Dasch on that date and which he refused to sign.

Q Mr. Wills, will you tell the Commission under what circumstances that statement was taken?

A This statement records the admissions made by the defendant Dasch during the time that Special Agent Johnstone and I were with him.

Q Was it taken in his presence?

A No, sir.

Q Just describe how it was taken.

A This statement was prepared--

Q If counsel will let me lead a little: There were three agents present when he made the statement, or two?

A Only two.

Q Who were they?

A Special Agent Frank G. Johnstone and myself.

Q Did you then dictate what he had said?

A Special Agent Johnstone dictated that Defendant Dasch had stated to us.

Q That dictation was not in the same room where Dasch was present?

A No, sir.

Q Was the dictation brought back?

A Yes, sir; it was.

Q Did Dasch then read it?

A Yes, sir; he did.

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Q Did you read it?

A Yes, sir; I have.

Q And Dasch said he did not wish to sign it?

A That is correct.

Q Did he give any reason for not wishing to sign it?

A Yes, sir; he did.

Q What was the reason?

A There were several reasons.

Q Give the reasons. I do not mean, in detail. Why did he not want to sign it?

A He had stated that he would sign nothing; that he wanted to appear before the court, and that he would sign nothing.

Q Did he write anything on the end of the statement?

A No, sir; he did not.

Q Whose writing is this (indicating)?

A That is Special Agent Frank G. Johnstone's writing.

Q Did Dasch say whether or not and to what extent the writing that was shown him was correct?

A No; he did not make any mention concerning corrections. However, he did point out his objections to the statement.

Q I show you Exhibit P-94 and ask you what that is.

A This is a summary of the objections made to the statement by Dasch.

Q Then Dasch did make objections to the statement?

A Yes; he did.

Q What objections were they? Are the objections shown on Exhibit P-94 which I have just shown you?

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A Yes, sir; they are shown on this exhibit.

Q Did Dasch say whether or not the original statement and the objections which he stated to you, shown in P-94-- that those two documents correctly expressed what he had said to you?

A No, sir; he did not.

Q He did not say that?

A No, sir.

Q Have you read both of these exhibits?

A Yes, sir; I have.

Q Does the first exhibit, P-93, with the second exhibit correctly express what Dasch said to you?

A Yes, sir.

Q Using these two documents to refresh your recollection, will you tell the Commission what Dasch said to you?

A Shall I just read the statement?

The Attorney General. Do you object to his reading it?

Colonel Ristine. If the Commission please, I understand there was an elaborate statement prepared and signed by Dasch, and I suggest that it would be much better, in my opinion, to offer that in evidence, rather than to attempt to elicit statements from the witness respecting statements made and a long, lengthy explanation as to what the various objections were to the signing of that document.

The Attorney General. Colonel Ristine, I am afraid that I will have to be permitted to try my case in my own way.

Colonel Ristine. I am objecting to this manner, in view of the fact that there is a statement signed by the defendant Dasch, prepared by the F. B. I. in the same particularity that the previous statement of Burger was prepared.

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The Attorney General. I think it is fair to the Commission to say that the reason that I am not putting in that statement is that it is 254 pages, and most of it is highly irrelevant. Most of it has nothing to do with this trial at all. It would probably take four or five days to read that to the Commission. We are trying our case, and I believe that I can put in all the evidence that I wish to put in with respect to what Dasch said by asking this witness to tell the Commission what Dasch said. Therefore I will now ask the witness again, refreshing his recollection with this paper, to say to the Commission what the witness Dasch said to him in that room.

Colonel Ristine. We object, of course, to the witness refreshing his recollection from reading the paper, because, in effect, it would amount to the reading of the document prepared after the conversation was taken. It is an unsigned statement, a statement which the witness refused to sign because it did not contain many of the matters which were discussed in the conversation. Obviously it would not be proper to permit them to just relate a part of the conversation.

The Attorney General. I will withdraw the question. I will offer both exhibits in evidence.

Colonel Ristine. And we object, if the Commission please, because it is perfectly apparent from Exhibit P-94 that many matters were left out of the statement which were part and parcel of the same conversation, the details of which are not contained in either document; and therefore it would be an attempt to single out certain matters and defi-

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nitely delete other matters explanatory of those matters and would be very misleading and unfair to the defendant.

The Attorney General. Counsel can cross-examine the witness to his heart's content and go over all this material. These are admissions by Dasch, a defendant in this case; and I am asking the witness to say what they are. To simplify it, I am offering these documents in evidence, the witness having stated that this document (indicating) correctly shows, with the addenda suggested by Dasch himself as to a word here and a word there, what Dasch told, and I am now offering these in evidence. I cannot conceive that there should be any objection to that.

Colonel Ristine. May I make the further objection, if the Commission please, that no stenographer was present; no one attempted to take down the conversation as it occurred. The document P-93 is merely a summary of what this witness says were damaging admissions or admissions against interest in the conversation, that did not include and did not purport to include those things which he said in his own behalf and in his own favor as part of the same conversation. The objections are merely generalities, and it would be impossible if the testimony were offered in that way to get the true picture of the conversation. I think it would be both unfair to the Commission and unfair to the accused to receive the documents in evidence.

The President. Have you any further comment, Mr. Attorney General?

The Attorney General. No, except that the Commission may want to consider this in ruling. I offer this because it is the simplest and quickest way of getting it into the record.

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I think there can be no doubt that it should be introduced. If not, I will ask the witness, first, to read to himself, refreshing his recollection, each page; then turn the page down and testify to the Commission after refreshing his recollection. That seems to me to be a rather silly procedure; and to simplify and expedite it I am offering the statement which was made by Dasch and which the witness says is correct, with the addenda. I renew my offer.

The President. The Commission will close.

(The Commission was then closed. When it reopened the following occurred:)

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The President. The Commission is open.

We will be seated and await the return of counsel for the defense.

Colonel Royall. I beg the Commission's pardon for the delay.

Colonel Ristine. I do likewise.

The President. Let me see. There is a motion and an objection before the Commission. Have you anything further to state before I make a ruling?

Colonel Ristine. No, sir, I think not, sir.

The President. The objection of the defense counsel Colonel Ristine representing the defendant Dasch is sustained.

The Attorney General. Very good. I now renew my question.

Questions by the Attorney General:

Q Will you look at the Exhibits 93 and 94, to refresh your recollection, unless you have done so already, and state to the Commission--

The President. I understand they are not in evidence.

The Attorney General. I offered them in evidence, the objection was made, the objection was sustained, so they are not in evidence.

The President. They are not in evidence, but, I take it, they are in the hands of the witness and you are referring to them as not in evidence.

The Attorney General. That is correct, Mr. President.

Questions by the Attorney General:

Q Will you look at the two exhibits and state to the Commission what Dasch said to you?

The President. Just one moment, Mr. Attorney General. I thought I had made it plain that they were not part of the record in any sense.

The Attorney General. That is perfectly plain.

The President. Either in the record or as exhibits. They are simply--

The Attorney General. They simply have been identified for purposes of reference and are in no way part of the record, is that correct?

The President. That is accepted.

The Attorney General. Thank you.

The President. Do you understand the status now, Colonel Ristine?

Colonel Ristine. I think so, Mr. President. I do not think, however, that it is appropriate or proper for the witness now to read that page by page.

The Attorney General. I have not asked him to do that.

The President. He did not ask that question.

The Attorney General. I did not ask that question.

The President. As I understand it, you hand these papers that are not in evidence to the witness in case you wish him to refresh his memory, is that my understanding?

The Attorney General. That is correct.

The President. Is there any objection to that on your part, Colonel Ristine?

Colonel Ristine. Not as stated in that form.

The Attorney General. All right.

Colonel Ristine. If the Commission please--

The President. Who made those notes?

Question by the Attorney General:

Q Who made the notes?

A This statement--these notes were dictated by Special Agent Frank G. Johnstone.

The Attorney General. May I renew the question? So it will be very clear, I will put it in this form.

Questions by the Attorney General:

Q Have you refreshed your recollection by looking at those notes?

A I have.

Q Will you now testify to the Commission what Dasch said to you?

A The defendant--

Colonel Ristine (interposing). Mr. President, pardon me, but might I be permitted to ask a question?

The President. Yes.

Colonel Ristine. Will you relate--

The President (interposing). I will just warn the witness that time, before he answers the questions, will be given for consideration of your questions by the Commission.

Colonel Ristine (addressing the witness). Will you attempt, insofar as you can, to relate the conversation which you had with Mr. Dasch, giving as near as possible everything which you or your associates said and everything in reply which Mr. Dasch said, disregarding the summarized paper which you said you had looked at to refresh your recollection.

The Attorney General. I asked the witness--

The President (interposing). Is there any objection on your part?

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The Attorney General. Yes. I asked the witness a very simple question. If there is an objection to that, I think it should be made. I will renew the question, if there is no objection.

Colonel Ristine. If the Commission please, I object to this witness' being permitted to testify as to recollections which he has refreshed his mind about by reading a statement which was dictated by a different person.

The Attorney General. Would the Commission wish to hear me on that line?

The President. I did not understand that.

The Attorney General. Would the Commission wish to hear me on that objection?

The President. I doubt if we will.

The Attorney General. Yes.

The President. Will you please state your question again? I will have the reporter read the question. Will you read the question put by the Attorney General, please, to the witness.

The Attorney General. The last two, if he may.

The President. The last two, yes.

The Reporter (reading): "Have you refreshed your recollection by looking at those notes?"

"Answer. I have.

"Question. Will you now testify to the Commission what Dasch said to you?"

The President. Do you object to those questions?

Colonel Ristine. If the witness will attempt to relate the conversation--

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The President (interposing). I just asked you if you object to the Attorney General's question.

Colonel Ristine. I did object, Mr. President, because of the previous effort to have him use that statement to refresh his recollection, when it appears that he did not even write the statement and when it also appears that much of the conversation which occurred is absent from the statement.

The Attorney General. Mr. President, it seems to me there is some confusion here. A witness, clearly, can refresh his recollection from anything on earth, a newspaper or anything else, and then can testify, and that is all I have asked this witness to do.

A Member. Is it not the rule, Mr. Attorney General, that when notes are taken, at that time they shall be transcribed accurately, at the same time, and then that those notes could be used for the purpose of refreshing his recollection? Now, you state, or it has been stated here in evidence that these notes were made by an entirely different person from this witness on the stand. Why should he refresh his memory from that, unless you can show a connection between the two as to what he had to do in connection with the preparation of that?

The Attorney General. With due deference, General Winship, first, it has been stated that Dasch talked to this witness and that then another person went out and made notes. This witness has stated that he has read the notes as shown in the exhibit and the addendum and they correctly show what Dasch said to him. But, aside from that, it seems to me hornbook law that a witness, if he does not read the material with which he refreshes his recollection, can testify as to anything that the

defendant said. The refreshing of recollection is simply that and nothing more. It is used to bring back to his memory what a witness said to him, what Dasch said to him, and therefore I have suggested that he look at this and having been refreshed with these two exhibits that he then turn them down and testify not what they contain but what he remembers Dasch said to him. If you will note the question, I asked him whether he would tell the Commission what Dasch said to him, after having refreshed his recollection, and that is all I have asked him.

A Member. I think that is all right.

The Attorney General. You think that is all right?

A Member. Yes. If he assisted in the preparation of those notes at that time, that is a different proposition than having someone else come in and keep dictating them at the same time, and then you offer them in evidence.

The Attorney General. I did not mean to give the impression that he assisted in any way in the dictating of the notes. I wanted to give the impression that the witness said that the notes correctly stated what Dasch told him. But my main point is that I am not asking him anything about this statement. It is not in the record and I am not asking him anything about it at all.

A Member. We think you have a perfect right, as we have stated already, to have him consult those notes, if those notes were made by him in consultation or by reading them over at the time that they were made by the other party who dictated them.

The Attorney General. He did read them over after they

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were brought in, as he testified.

A Member. If that is in evidence. I do not recall that that is in evidence at all.

The Attorney General. May I ask the witness more questions?

A Member. You might ask him some more questions on that, yes.

The Attorney General. So as to clear up precisely what you have in mind, General Winship.

A Member. Yes.

The Attorney General. The question is addressed as to just how the notes were made and used.

Questions by the Attorney General:

Q As I understand, you testified that Dasch came in and told you certain things, is that correct?

A That is correct.

Q And who were then present when he told you those things?

A That was over a period of time, and those present were Special Agent Duane L. Traynor, and Special Agent Frank G. Johnstone, and myself.

Q Then they were set down in this statement by somebody dictating, is that correct?

A As I say, this was over a period of time. A portion of this time there was a stenographer present, and these particular notes were dictated by Special Agent Johnstone, a portion of which was dictated in my presence.

Q And then they were brought in to you and you and Johnstone read them over with Dasch present, is that correct?

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A He read them over in our presence.

Q He read them over in your presence?

A Yes, sir.

Q And having then looked at the notes taken under those circumstances you have now been asked to state what Dasch actually said to you.

A Yes, sir.

The President. Is there any objection?

A Member. I think that ought to satisfy the Colonel.

Colonel Ristine. I think, Mr. President, please, he should just relate what the conversation was.

The President. You heard the question that the Attorney General asked him. If there is no objection in respect to that particular question, it might be read again by the reporter, without the background.

The Reporter (reading):

"Question. And having then looked at the notes taken under those circumstances you have now been asked to state what Dasch actually said to you."

Colonel Ristine. I think it would be better if the Attorney General will eliminate the notes and merely ask him for the conversation.

The Attorney General. All right, I will do it any way you wish.

Questions by the Attorney General:

Q What did Dasch say to you?

A During the time that I was in company with Dasch he told me that he was born on February the 7th, 1903, at Speyer, Germany, and that during the last World War he served with

3 the German Army in northern France. Following the Armistice he returned to Germany, and during October of 1922 he came to the United States as a stowaway on the S.S. Schohari. He made efforts to become naturalized and he wanted to clear up his legal entry.

Q Did you say legal or illegal?

A It should be illegal. He wanted to clear up his illegal entry. So he contacted the Immigration and Naturalization Service, who afforded him or gave him a card, a seaman's certificate, and he went to Germany on the S. S. Montclair, and he returned, making a legal entry into the United States.

Q How long was he in Germany on that trip?

A I think from the time that he left the United States until he returned a period of thirty days elapsed.

Q Go ahead.

A He remained in the United States until the spring of 1930, at which time he--or prior to that time--I beg your pardon--he enlisted in the United States Army, during 1927, and he went to Honolulu. He was in the Aviation Corps, and not seeing any future or advancement, he was discharged. He had been in the Army for a period of one year, one month and ten days. In 1930 he returned to Germany and was there, as I recall, a couple of months, and returned to the United States. He later returned to Germany during the same year. He remained for a period of three or four months and returned to the United States in the spring of 1931.

Q Now, Mr. Willis, you say he remained for three or four months. Did he tell you the purpose of his visit to Germany and what he did in Germany during those three or four

months?

A Yes, sir, he did. He moved during September, September the 18th, 1930, and I believe it was November of 1930 that he returned to Germany with his wife for the purpose of visiting. While there he went to Switzerland, Italy, and other countries in Europe. He returned during the spring of 1931 and remained in the United States ever since, until March, 1941. During the time he was in the United States he was a waiter and a salesman for Sanctuary Supplies. In March 1939 his mother came over, and during August or September of 1939 she returned to Germany, after she had heard that Germany and Russia had signed a pact.

At that time the defendant Dasch had pending naturalization papers. Since Germany was at war and he was a German national he said he did not want to feel like a rat, so he made efforts to return to Germany. He contacted the German Consulate.

Q Where?

A In New York City. He contacted the German Consulate in New York City, and after a lapse of time the Consulate notified him that he was able to return to Germany. On March 27, 1941, he sailed from San Francisco on a Japanese boat, the Tatuta Maru.

Q Did he say at that time whether or not the German Consulate paid for his passage or made arrangements for his sailing?

A The German Consulate in New York City gave him transportation tickets from New York City to San Francisco

and from San Francisco steamship tickets to Japan. While in Japan he was given transportation money. He was indefinite as to the amount of money he received in Tokyo, whether it was 621 yen, 621 dollars, 641 dollars, or 450 dollars, or 451 dollars. However, the German Consulate did furnish him with transportation, and in Japan with some money.

Q Whom did he go to see in Tokyo? The German Consul?

A The embassy, as I recall.

Q The German Embassy in Tokyo?

A Yes, sir.

Q And the German Embassy made the arrangements for the further trip?

A Yes, sir, to Germany.

Q I am not quite clear what you said. Did they give him the tickets or money or both?

A They gave him money?

Q Money for what purpose?

A To travel to Germany.

Q To travel to Germany?

A Yes, sir.

Q What did he then do?

A He left Tokyo on April the 22nd and proceeded through Russia.

Q Before he left Tokyo did he say whether or not he signed any documents?

A Yes, sir, he did. He signed a document showing the indebtedness to the German Government.

Q You have not yet stated whether or not he told you

the object of his visit to Germany. Are you going to state that now, or later, or did he state that to you?

A The defendant Dasch stated that the reason he wanted to return to Germany was that if he remained in the United States with Germany at war and he being a German national, it would make him look like a rat, and he wanted to return to Germany for that reason. Furthermore, his mother at the time she was here had told him that Hitler had done well in Germany and he wanted to go over to see for himself.

Q Did he state whether or not he knew at that time any of the other defendants in this case?

A Going over on the Tatuta Maru there was one passenger that defendant Dasch mentioned, Werner Thiel, who is presently before the Commission. On leaving Tokyo--

Q Was Thiel with him when he left Tokyo?

A That I do not know, sir.

Q All right.

A On leaving Tokyo he went through Russia and entered occupied Poland at Malkinia on May 13, 1941. From there he went to Berlin, and he then, I think, registered with the foreign association, the Auschland Association.

Q Before you continue, did he state whether while he was in America he belonged to any German associations?

Colonel Ristine. If the Commission please, I think it is a highly leading question. I do not see much difference between the witness' refreshing his recollection and going along through this statement that was dictated by somebody else and the Attorney General's suggesting from time to time in sequence

what the statement has. I don't think that is proper examination of the witness.

The Attorney General. I would like to have an objection made, if there is one to be made.

Colonel Ristine. It is leading.

The Attorney General. Of course, I do not want to lead, but I would like an objection made to the specific question. I did not know that I had led him in any sense. Do you object to this question?

Colonel Ristine. I had not objected to several that were leading, but I do object to the last one, which was very decidedly leading.

The President. Will you read the question, Mr. Reporter?

The Reporter (reading): "Before you continue, did he state whether while he was in America he belonged to any German Associations?"

The Attorney General. I will withdraw the question.

Questions by the Attorney General:

Q Proceed.

A He was in Berlin and he had to go to Stuttgart. That was where the American branch of the Auschland Association was located.

The President. Mr. Attorney General, in view of the time and our probable reserve as to adjournment, I take it this witness will be on the stand some time.

The Attorney General. Yes, sir.

The President. It is the purpose of the Commission to permit, after adjournment, some accredited representatives from the newspapers to come in to the rear of the courtroom, while

we are still seated here, as though we were in session, to permit the accredited newspaper men to get a picture of the Commission as it functions, a mental picture, having already permitted the other pictures to be taken. So I will adjourn the Commission--for an hour or an hour and a half?

The Attorney General. An hour would please me better.

The President. How about the defense counsel, do they want more time than an hour?

Colonel Ristine. I have several matters I would like to confer about, if we could have the additional thirty minutes.

The Attorney General. They have got all Sunday.

The President. If the defense counsel wish the extra half hour, it will be given them. We will probably sit an extra half hour later this afternoon. Anyway, we are sitting without regard to hours and we will consult both sides as to that point.

The Attorney General. I understand, then, that you will reconvene at 2 o'clock?

The President. We will reconvene at 2:00 and we will take about five minutes to permit these newspaper men to look around.

The Commission is adjourned formally.

(At 12:35 p.m., a recess was taken until 2 o'clock p.m. of the same date.)

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A F T E R R E C E S S

(The Commission reconvened at 2:30 o'clock p. m., upon the expiration of the recess.)

The President. The Commission is open.

The reporter will please note that the Commission extended its recess at lunch time upon request of the defense counsel Colonel Ristine so that he could have time to confer with the defendant whom he represents.

Colonel Hanson. Let the record show that the personnel of the Commission, of the prosecution, and of the defense are present as at the close of the previous session; also that all eight of the accused and the reporter are present.

The witness is reminded that he is still under oath.

The Witness. Yes, sir.

The Attorney General. With the permission of the Commission and by agreement of counsel for the defense, we should like to withdraw this witness for a very few minutes and to put on Lieutenant Colonel Potter with reference to the Florida situation, so that Colonel Potter may report back to his duties as promptly as possible.

The Judge Advocate General. Is there any objection to this witness staying in the room?

The Attorney General. No. Just let him take a seat in the back of the room.

Lieutenant Page. This witness has not been sworn, sir.

The President. Mr. Attorney General, if you have no objection, I should prefer to have Mr. Wills remain outside until recalled.

The Attorney General. Will Mr. Wills withdraw, please?

(The witness Wills withdrew from the hearing room.)

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Colonel Munson. Lieutenant Colonel Potter, will you step up, please?

You will take two oaths. One is the oath of secrecy. You understand that a violation of that oath might subject you to punishment for contempt proceedings or otherwise as a penal offense, since the Commission has power to punish for violation of this oath of secrecy? Do you understand that?

Lieutenant Colonel Potter. Yes, sir.

Colonel Munson. Will you please raise your right hand?

You do solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by proper authority?

Lieutenant Colonel Potter. I do.

Colonel Munson. Now the oath as a witness:

Do you swear that the evidence you shall give in the case now on hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Lieutenant Colonel Potter. I do.

LIEUTENANT COLONEL MARSHALL O. POTTER

was called as a witness for the prosecution and testified as follows:

Colonel Munson. What is your name, rank, organization, and station?

The Witness. Marshall O. Potter, Lieutenant Colonel, 104th Infantry, Atlantic Beach, Florida.

The Attorney General. I will ask the reporter to mark these three orders.

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(3 orders were marked as Exhibits P-95, P-96, and P-97, for identification.)

DIRECT EXAMINATION

Questions by the Attorney General:

Q Lieutenant Colonel Potter, where did you say you were located?

A At Atlantic Beach, Florida, sir.

Q Are you the executive officer?

A I am, sir.

Q Attached to what?

A The 104th Infantry.

Q Who is your immediate superior?

A Colonel John J. Higgins.

Q Is that the Southern Sector?

A Yes, sir.

Q Where is the headquarters of the Southern Sector?

A Jacksonville, Florida.

Q Who is in command of the Southern Sector?

A General Loomis now commands the Southern Sector.

Q I show you Exhibit P-95, which is dated April 10, 1942, and ask you what it is.

A That is a field order that was issued by the Commanding General of the Southern Sector at that time, General Blood.

Q Issued to whom?

A To the commanding officer of the troops that were then stationed in the Southern Sector.

Q Who was the commanding officer at that time?

A That was the 8th Division--troops from the 8th Division, sir.

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Q Was that issued to you by the commanding officer?
Not issued to you but given to you by the commanding officer?

A Yes, sir.

Q Is that still in effect?

A Yes, sir.

The Attorney General. I offer Exhibit P-95 in evidence.

(Exhibit P-95 was offered in evidence.)

Colonel Royall. The defendants object but not on the grounds of identification or authentication. We object on the same ground as we objected to the other orders, relating to the Eastern Sector. I think the Court has ruled adversely, but we want to reserve our rights.

The President. Do you mean the ruling we made as to the suspension?

The Attorney General. No, General McCoy.

Colonel Royall. At the outset or the early part of the hearing there were introduced certain orders and proclamations relative to the Eastern Sector of the country.

The President. Oh, yes, I remember.

Colonel Royall. At that time we objected, but the Commission did not sustain our objection. We make the same objection here in order to preserve our position.

The President. The objection of the defense is not sustained with reference to this particular point.

Colonel Royall. I think there are two more documents, so I think it would be a convenience to have the record show that we object to them on similar grounds.

The President. Exactly; and the record will show that the objection of the defense counsel is overruled.

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The Attorney General. I now offer Exhibits P-96 and P-97, which are two documents.

Colonel Royall. How are they designated?

The Attorney General. P-96 is dated June 3, 1942, and the subject is "Accomplishment of Southern Sector Mission."

Exhibit P-97 is dated June 4, 1942.

I do not want to read all of these, but I should like to read a paragraph from the first and then hand up the rest. They are already in evidence.

2 a of Exhibit P-95, to which the witness has already referred, reads as follows:

"2. a. The Southern Sector, with units attached from the 8th Division, will protect the coastline within its boundaries against attacks from land and sea, and against paratroops and airborne troop attack along the beaches.

"(1) Liaison will be established with Army Combat Forces, Navy and Air Force units within the Sector and with adjacent Army units without the Sector.

"(2) Sub-Sector Commanders will establish contact with the nearest AWS Information Center for air alert information.

"(3) A continual reconnaissance will be made by all units.

"(4) Warning systems will be continued as outlined in SOP, Southern Sector, S. C. F. and letter EDC and First Army dated 4/2/42, file 324.5/227, Subject: 'Observation for Security of Coastline.' Patrols will be established in areas not adequately covered

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by the warning system. Every effort will be exerted to detect possible landing of enemy agents from submarines."

The President. May I ask if you have read the complete title of that? You spoke of the Southern Sector.

The Attorney General. I will read it completely as it is headed:

"Headquarters Southern Sector, Southern Coastal Frontier, 3d Floor, Walton Building, Atlanta, Georgia. Field Order No. 6. 12:00 Noon, 10, April. '42."

I do not think there is any further heading.

The President. That is sufficient. I just wanted to get the full name of the authority issuing the order.

The Attorney General. Exhibit P-96 is headed:

"Headquarters Southern Sector, Office of the Commanding General, Realty Building, Jacksonville, Florida. June 3, 1942.

"Subject: Accomplishment of Southern Sector Mission."

It is addressed to:

"Commanding Officer, CT 104, Atlantic Beach, Florida."

Question by the Attorney General:

Q Who is the Commanding Officer, CT 104, Atlantic Beach, Florida?

A That is Colonel Higgins, sir.

The Attorney General. (Reading):

"1. Elements of CT 104 stationed at Jacksonville Beach will be prepared to execute the mission of the

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Southern Sector. Plans will be prepared for the following objectives:

"a. Readiness at all times to furnish a striking force to operate in the area Jacksonville; Mayport Section Base; Jacksonville Beach; St. Augustine, in the event of attack on vital military and naval installations.

"b. Maintenance of motor patrol along the inhabited area of the beach road to detect signalling to enemy agents, landing of enemy agents from submarines, subversive activities.

"c. Coordination with Commanding Officer, Mayport Section Base in defense of Beach Area.

"By command of Brigadier General Loomis:

"/s/ Ralph E. Hill,
"Colonel, C.A.C.,
"Executive."

The President. What is the date of that order?

The Attorney General. That date is June 3, 1942.

Questions by the Attorney General:

Q Have you yet stated whether or not the orders of June 3 and 4 are still effective?

A They are still in effect, sir.

Q And were in effect on June 17, 1942?

A That is correct, sir.

Q Did the area covered in the paragraph which I have just read, which refers to Jacksonville, Jacksonville Beach, et cetera, cover Ponte Vedra Beach?

A It did.

Q Where is the Ponte Vedra Beach?

A Just south of Jacksonville Beach, adjoining it.

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Colonel Royall. May it please the Commission, do I understand that my objection also applies to the oral testimony relating to these orders?

The President. Yes, sir, as far as it affects these papers which have been introduced.

Colonel Royall. That is correct.

Question by the Attorney General:

Q It forms a part of the area covered by patrols under you?

A Yes, sir.

The Attorney General. Cross-examine.

CROSS-EXAMINATION

Questions by Colonel Royall:

Q Do you know how many sectors or areas the United States is divided into?

The President. Please repeat the question.

Q How many areas or sectors is the United States divided into?

A Does the Colonel mean defense sectors?

Q What was your sector called?

A This is the Southern Defense Sector.

Q How many defense sectors is the country divided into?

A I am not familiar with the entire country; I am familiar only with the Eastern Seaboard, sir.

Colonel Royall. That is all.

The Attorney General. That is all.

We shall not need this witness any further, unless counsel for the defense should desire him, so with the permission of the Commission I should like to send him back. May he be

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excused?

Colonel Royall. As far as I am concerned.

The President. You are excused, Colonel.

The Attorney General. Counsel for Dasch informs me that he does not now wish to recall Coast Guardsman Cullen, whom we kept here. Will it be satisfactory if we now let him go?

Colonel Ristine. Yes.

The President. Colonel Royall, have you any objection to the departure of the witness stated?

Colonel Royall. No, sir; we had not indicated any desire to examine him further.

The Attorney General. We will recall Mr. Wills.

Colonel Munson. The witness is reminded that he is still under oath.

The Witness. Yes, sir.

NORVAL D. WILLS

was recalled as a witness for the prosecution and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION--Resumed

Question by the Attorney General:

Q Mr. Wills, I do not remember just where we were when we recessed.

Colonel Ristine. If the Commission please, in view of some new facts which came to light during the noon recess, I should like to be permitted to ask a few additional questions of this witness with a view to making another motion respecting his testimony.

The Attorney General. I respectfully suggest that the motion be made without questioning. I do not see why counsel

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should question the witness any further. If he wants to make a motion, I should be glad to have him make the motion now.

Colonel Ristine. The motion, if the Commission pleases, will be based upon facts which I was informed of during the noon recess and which I wish to verify by the testimony of this witness. The facts are not now in the record.

The Attorney General. I object and should like, with the permission of the Commission, to proceed with my witness in due course. The Commission having ruled, I should like to go ahead.

The President. You will have a chance to cross-examine the witness, I take it, after the Attorney General has finished his direct examination.

Colonel Ristine. With the understanding, then, that if these things are corroborated, I may then have the privilege of moving to strike out the testimony of this witness? It seems to me that the appropriate thing to do would be to permit me to ask a few questions, and then if this witness testifies as I think he will, I believe the Commission would sustain a motion to strike now, thus saving the taking up of time for the further testimony of this witness.

The President. No objection has been made; it is purely a statement that has been made.

Colonel Ristine. I do not mind disclosing to the Commission that during the noon recess I was informed--

The Attorney General. Wait a minute. I object. I do not think it is appropriate for counsel to give testimony.

Colonel Ristine. I am not giving testimony. I asked for permission to ask the witness a few questions.

The President. I take it you have a right to ask the wit-

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ness anything subject to the objection of the Attorney General, but is it not proper procedure, since the witness has been introduced by the Attorney General or by the prosecution, to give the prosecution an opportunity to question its own witness subject to your objection? I should be glad to be informed by the honorable counsel on both sides.

Colonel Histine. If I may suggest it, I believe the proper procedure, where either side desires to make a motion requesting that the witness be permitted to be heard with respect to the matter about which he intends to give testimony, to be that they are always permitted as a preliminary matter to interrogate the witness respecting those matters which would make his testimony incompetent; and if the facts appear from his testimony--that is, in answer to these particular questions--that his testimony with respect to the alleged confession is incompetent, then the Court would sustain the objection, and we would not have the long testimony of the witness.

The Attorney General. May it please the Commission, all I am interested in is expedition, not in any technical objections. If I am to be continually interrupted in the examination of my own witness after questions have been addressed to him and we are to take a good deal of time in going over his questions to see whether or not his evidence would be admissible, I have no objection, but it does keep interrupting the thing, and I just do not know when I am going to finish.

This witness was put on and examined at great length. Now here, in the middle of the evidence, counsel again wishes to ask him questions. I have no objection if the Commission thinks that is proper procedure. I do not want to be technical

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about it, but I want to get on with my case.

The President. Are there any further remarks from Colonel Ristine or from the other defense counsel?

Colonel Royall. After Colonel Ristine has finished, I should like to say a word.

Colonel Ristine. You may. I have finished my statement.

Colonel Royall. May it please the Commission, I think Colonel Ristine desires, and I believe under the circumstances it would be appropriate to give him an opportunity, to examine this witness to determine whether the confession or alleged confession of Dasch would be admissible. Ordinarily, of course, those facts should be determined before the testimony begins. However, as Colonel Ristine explained to the Commission before, when the Commission took the matter under advisement, he had not been prepared for the contingency that did arise. He did not know that this unsigned statement or any testimony using it as a basis of recollection would be offered. He had assumed that the signed statement of the defendant Dasch would be offered. Therefore, he has not had an opportunity either to look into the contents of this or to confer with his client as to the circumstances under which these statements now being testified to were made.

It seems to me that it is highly appropriate for Colonel Ristine to present to the Commission, for whatever they may be worth, facts which have just come to his attention. If those facts require the exclusion of any further declarations of the defendant Dasch, why, they ought to be excluded. It would not be just not to exclude them. Therefore, I think he should have the opportunity.

The question may arise in the mind of the Commission why

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I am addressing myself to this when I do not represent Dasch. I should like to clear that up. We have objected to these declarations on the ground that the confession is not admissible against the other defendants. However, the Commission still has that under advisement. I must, therefore, protect my client from a contingency which I hope will not arise but which may possibly arise if this should be considered against the other defendants.

With that in view, I have myself, for the first time, read during the noon recess the paper which this witness has used to refresh his recollection, and I think that this examination may elicit matter that would be prejudicial certainly to the defendant Dasch, and if admitted as to our clients, prejudicial to them.

I think the Commission could and should properly permit Colonel Ristine to develop facts which have just come to his attention. I do not believe it is going to serve to delay very long, because as between the two courses, to determine it now might shorten it.

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The President. It would not be a question with the Commission as to the time. We will give you all the time you want.

Colonel Royall. It might shorten it. I was replying largely to what the Attorney General said about expediting it. It certainly could not take any longer to follow that course than to wait until the evidence is introduced and then move to strike it out.

The President. Before you sit down, Colonel Royall, I would like to ask for a little information on the subject of the procedure in a like case, just for information. Assuming for the moment that the accused can introduce any witness they please, without any explanation of what they intend to bring out, and to put certain questions to the assumed witness on the stand without reference to any development involved, it would be a proper procedure, I take it, for the prosecution to go ahead with the questions and objections to the questions, if there are such, to be posed. In other words, the procedure would be to allow either side, when they introduce a witness to ask a certain series of questions. I take it the issue that is involved is that instead of asking questions, certain papers have been attempted to be introduced into evidence, which have not been introduced, but which the defense feels might even prejudice their case, now that it has been attempted in open court.

Colonel Royall. No, sir; I do not think that is quite the problem, though I see very clearly why the Commission would think that that is the problem, because the whole picture has not been given. But I do not want to state anything to the

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Commission that might in any way transgress the proprieties, and I do not think I shall. But here is the situation, as I understand it--and I hope my associate or semi-associate, Colonel Ristine, can understand it. I think that the Commission's ruling made prior to the recess, to the effect that this witness could refresh his recollection and then testify as to the statements made, was entirely a correct ruling. I do not understand that Colonel Ristine intends to reopen that question. But there is another question which arises: Whether it was in writing or whether it was orally given, a confession must first have been given voluntarily and without any promise or inducement.

On that preliminary question, which I think is the one that Colonel Ristine intends to raise, if I correctly understood his remarks, if the prosecution introduces a witness to prove a confession, the law is--and I do not think this can be seriously contested by anyone--that the defendant, before the witness testifies to the confession, whether it be oral or in writing, has the right to examine the witness as to the circumstances under which the confession was made.

As a matter of fact, I think that is expressly covered, if I recall correctly, in the Court-Martial Manual. It certainly is the general rule in civil practice. That is what should have been disposed of before the witness started to give the substance of what Dasch told him. A failure to raise that question at that time might have been a waiver on the part of Colonel Ristine. However, the Commission in its discretion can permit that to be done during the testimony, under various circumstances, and it can permit it to be done in a case like

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this where Colonel Ristine has just for the first time learned these facts. I think if it were an ordinary court there would be no doubt about permitting him to do so, where he states to the court that he has just learned the facts. I see no reason why this Commission should not follow that, because it is palpably in the interests of justice.

If the confession was obtained, whether orally or in writing, under circumstances either duress or promise-- and I do not know what the facts will be; I have no idea-- if it was obtained under either of those circumstances, the confession should not be given to the Commission, whether it is written or oral.

Do I make myself clear?

The President. I think that that clarifies certain preliminaries for me as an individual.

Are there any further remarks on the part of the prosecution?

The Attorney General. I will make some very brief remarks.

There is no confession before you at all. I asked this witness to testify to what Dasch told him. The document from which he has refreshed his recollection has been in the possession of counsel for the defendants for five days.

As to the law on the subject, let me read from one of the leading cases in the Circuit Court of Appeals (reading):

"It is the rule in the Federal courts that the fact that a confession is made by an accused person, even while under arrest or when drawn out by questions by the officer, does not necessarily render it involuntary.

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There is no presumption against a confession and no burden upon the Government to establish its voluntary character."

I am simply asking this witness to say what Dasch told him. On cross-examination counsel for Dasch can bring out anything he wants.

So I renew my objection. I do not want to take up any further time.

The President. Are there any further remarks, Colonel Ristine?

Colonel Ristine. Yes, if the Commission please. The matter about which I wish to interrogate the witness is not involved in the case which has been cited to the Commission by the Attorney General, but it raises an entirely different issue.

Colonel Royall. I do not want to be mixing in something which only indirectly or contingently concerns me--

The President. I am very glad to have you develop it. The more light we get the better.

Colonel Royall. The Court-Martial Manual states the rule rather clearly, and it is not inconsistent with what the Attorney General read to you, but he did not cover the case which I think will be presented by this testimony. The word "confession"--and the Court-Martial Manual is clear on that--and the word "admission" are treated alike. In other words, any statement that a defendant makes which may tend to incriminate him to the slightest degree is a partial confession. It does not have to be written. That does not make any difference. It is an admission which follows, according to the Court-Martial Manual, the same rule. That is made clear at

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the bottom of the page, where it says that it follows the same rule, in paragraph 114-b.

So that distinction is not a sound one, as we conceive it. If this witness testifies to anything Dasch said that is adverse to his interest in this trial, that is treated under the Court-Martial Manual and under the statutes as a confession. The law says that the fact that the confession was made to a superior military authority or to a representative and agent of such superior--and the same thing applies to an officer of the law--it will ordinarily be regarded as requiring further inquiry into the circumstances. In other words, the mere fact that he does not admit it--that is the civil law, and it is true of military law--requires a further inquiry into it.

That is the sort of inquiry which we are seeking to make. (Reading):

"Facts indicating that a confession was induced by hope of benefit or fear of punishment or injury inspired by a person competent (or believed by the party confessing to be competent) to effectuate the hope or fear is, subject to the following observations, evidence that the confession was involuntary. Much depends on the nature of the benefit," and so forth.

As I understand it, that is the feature of the case upon which Colonel Ristine desires to examine this witness, and it seems to me that he ought to be permitted to do so. It cannot do any harm if it does not develop that this rule is violated. It can do a great deal of good if it should develop that this rule is violated.

The President. Are there any further remarks?

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The Attorney General. No further observations.

The President. Subject to objection by any member of the Commission, the contention of the defense is sustained, and counsel will be permitted to ask a question and other questions if he so desires, and no objection will be made to them.

PRELIMINARY EXAMINATION

Questions by Colonel Ristine:

Q Mr. Wills, were you present on Saturday, June 27, 1942, in the evening, with Mr. Donegan, Mr. Johnstone, Mr. Traynor and Mr. Dasch, when a proposal was made that he should plead guilty?

A I was.

Q And was it stated as a part of that proposal that after his plea of guilty he should be sentenced and that during the trial he should not divulge anything with respect to the agreement that was made, and that after the case had died down and for about, say, three to six months, the F.B.I. would get a Presidential pardon for him?

A That, in substance, is true.

Q And was the statement also made to Mr. Dasch that that would be the best procedure for him to follow in order to protect his father and mother in Germany?

The Attorney General. Wait just a minute. I think the witness ought to be asked what took place, instead of having words put into his mouth, and then saying yes or no. It does not seem to me that that is a proper question. It is not really cross-examination at all. I think that this witness should be asked what was suggested to Dasch with respect to those things. I do not think it is appropriate to have a

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long leading question propounded.

Colonel Ristine. I am perfectly willing to phrase the question the other way.

The President. Develop the question.

Questions by Colonel Ristine:

Q Would you tell the Commission what was said in favor of the proposal, if anything, respecting his father and mother?

A The proposal was given to protect the father and mother and relatives in Germany or in German-occupied countries.

The Attorney General. To protect them from what?

The Witness. From harm.

Questions by Colonel Ristine:

Q Following Dasch's statement that he would not go through with that proposal, did you, in company with Mr. Johnstone, make any efforts to persuade him to agree to go through with it?

A Yes, sir.

The Attorney General. Ask him what they were.

Questions by Colonel Ristine:

Q Could you tell us what statements were made to Dasch by you and Mr. Johnstone in asking him to agree to that proposal?

A The exact wording I do not recall; but he was told that he should have some consideration for his father and mother and relatives over in Germany and occupied countries.

Q I believe questions were propounded to Dasch from June 19, about 11 a. m.--

The President. I would sense that you are making a statement yourself. I should prefer you to put it in the

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form of a question to the witness.

Colonel Ristine. I shall be glad to do so, Mr. President.

Questions by Colonel Ristine:

Q Could you tell the Commission when the questioning of Dasch started?

A I can only state as far as I know. I first saw the defendant Dasch on Sunday, June 21, 1942, about noon-time.

Q At that time had he been interrogated for some time previously?

A I understand that he had been.

Q Were you furnished with any copy of the interrogations up to that time?

A Yes, sir; I was.

Q From that time forward and prior to the time when the 254-page statement was signed by him and initialed by him, how long was he interrogated?

A He was interrogated--that was Sunday, Monday, Tuesday, and Wednesday morning. That was a portion of the day. I think we began two days about 11 o'clock in the morning, and we would stop around 6:30 on one evening, that I recall, and we stopped again around 9 o'clock, after having had dinner. Then on Wednesday, as I recall, he began reading the statement, and he was there until rather late at night, and we went back Thursday morning and he read the statement.

Q And when was it signed?

A On the 25th day of June, in the morning.

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fls at
3:10 p m

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Q Now, will you give us the date of the proposal that was made respecting the plea?

A Let me see. That was on Saturday, June the 27th.

Q The questions propounded by you and Mr. Johnstone and about which controversy arose over the summary contained in the document which was offered here, of date July 2, 1942, occurred at what time with respect to the signing of the original confession and the proposal that he enter a plea?

A That was presented to the defendant Dasch on July 2, 1942.

Q And that was subsequent, I take it, to the happening of those other two events?

A That is correct.

Colonel Ristine. Now, if the Commission please, in the light of what the witness has said, we submit that his testimony with respect to any conversation subsequent to that proposal, particularly in the light of the reason urged for the proposal, is not admissible or competent for any purpose. We not only object to his giving testimony further about the matter, but move to strike out the testimony already given.

The Attorney General. Before you rule on that may I take the witness for a while?

The President. Yes.

Questions by the Attorney General:

Q Mr. Willis, Dasch came down voluntarily to the F.B.I. office, didn't he?

A That is my understanding.

Q And did you, so far as you know yourself, when you were present, make him any promise of any kind?

2b

A No, sir.

Q With respect to what was to be done with him?

A No, sir.

Q Who indicated to him that he might wish to plead guilty?

A Mr. Donegan.

Q Mr. Donegan?

A He talked to the defendant.

Q Plead guilty in a court of law. Where was he to plead?

Colonel Ristine. If the Commission please, we object to the leading form of the question.

The Attorney General. All right, I will change it.

Questions by the Attorney General:

Q Where was it proposed that he should plead?

A At that time it was believed that this matter would appear before the Federal court and he was to appear before a Federal judge, and at that time enter his plea.

Q And he said he would not, is that right?

A He said that he would.

Q He said that he would at that time?

A Yes, sir.

Q And then when did he say he would not?

A The next day, so far as I know.

Q And what did you say to him with reference to if he would plead what would happen, what was told him exactly?

A As I recall the substance, he was told that if he appeared in Federal court and entered his plea of guilty and be sentenced along with the other defendants, that after a

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period of about six months efforts would be made to get a Presidential warrant, or that he would get a Presidential warrant--a Presidential pardon.

Q This was the basis of these recommendations that you made at that time?

A The recommendations for the Presidential pardon?

Q Just what did you say to him that you would do if he did certain things? Did you promise him anything?

A I promised him nothing.

Q Did anybody promise him anything?

A Yes, sir. Mr. Donegan, on the afternoon of Saturday, June the 27th, told defendant Dasch that he would be indicted and appear before a Federal court, that at that time he should enter his plea of guilty, or if he entered his plea of guilty and he was sentenced to prison along with the others that through the F.B.I. a Presidential pardon would be obtained for him.

Q How long before that had Dasch begun to discuss his implication with any of the members of the F.B.I.?

A As I stated a while ago, I first saw Dasch on June 21st, which was Sunday. It is my understanding that he first appeared on June the 19th, 1942.

Q He first refused? At first he said he would not plead?

A Yes, sir.

Q And then what did he say the next day?

A The next day he said he changed his mind. I might go back. On this Saturday afternoon there was an alternative that he could appear in open and take the other--

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Q Appear in what?

A Appear in open and come right out and say that he was the man who came in and turned in the other defendants.

Q Then how soon after that or before that was this statement which has not been offered, but which has been identified, taken?

A That was two days before.

Q What was two days?

A The statement that Dasch signed was two days before.

Q Now, wait. I do not want to confuse you. I am not talking about the statement that Dasch signed. I am referring to the statement that was dictated and not signed. What was the relation of that in time to the time that he said he would not plead?

A The statement that was presented to Dasch and he refused to sign was offered--I believe it was four or five days later; the difference between June the 27th, 1942, and July the 2nd, 1942.

Q So that four or five days after he had refused to plead and after interrogation, he was given this statement?

A Yes, sir.

Q And refused to sign it?

A Yes, sir.

Q So that the statement was not in any sense induced by a suggestion that he should plead guilty, on the acceptance of it?

The President. I think, Mr. Attorney General, that I prefer you ask questions rather than make statements.

The Attorney General. I beg your pardon.

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Questions by the Attorney General:

Q Was the statement which was not signed induced by any decision on Dasch's part to plead or not to plead?

2 Colonel Ristine. If the Commission please, that calls for a conclusion. The facts should determine the answer to that question. The witness certainly is not qualified to answer that question. That is the ultimate fact that this Commission must pass upon.

The Attorney General. It seems to me--

The President (interposing). I will hear the defense first on this.

Colonel Royall. May it please the Commission, to ask this witness what induced Dasch to sign is about the barest conclusion that you could have in the law. You cannot prove a state of mind by the testimony of an opinion of another person. You have to prove it by the facts and deduce what must have induced him to do so. He cannot testify to that.

The President. Colonel Ristine.

Colonel Ristine. If the Commission please, a confession was started on June 24, 254 pages long, the result of five or six days of interrogation. Following that three days, on June 27th, is when this proposal was made to Dasch that in order to protect his father and mother in Germany from harm he appear in court and plead guilty, and if he would do that, at the end of a period of six months the F. B. I. would procure for him a Presidential pardon, and that that was for the purpose of protecting his father and mother in Germany.

Now, the testimony is that he first agreed to that and then the following day said no, he would not do that, and that

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further questions and answers took place, about which this witness is now attempting to give evidence.

It seems to me perfectly obvious that no one could tell, and particularly not any witness who was interrogating Dasch, what actuated Dasch in his future talks with these agents.

The Attorney General. May I interrupt just a moment at this time?

Colonel Ristine. Having who made that proposal--

The President (interposing). Let the defense counsel finish, please.

The Attorney General. I just was going to withdraw the question. If this is an objection to my question, I now withdraw the question.

The President. All right.

The Attorney General. If that will satisfy you.

The President. Very well.

The Attorney General. I now withdraw the question.

Questions by the Attorney General:

Q Mr. Willis, when did this witness Dasch first begin to make admissions and tell his story to you?

A On June the 21st, 1942.

Q And did he continue on June the 22nd?

A He did.

Q Was anything on June 21st or 22nd said about a plea?

A No, sir.

Q Did he continue on June 24th with his statements to you and others?

A Yes, sir.

Q Was anything on that day said about a plea?

A No, sir.

Q Did he continue on June 25th with the statements and admissions to you?

A Yes, sir.

Q Was anything said about a plea?

A No, sir.

Q Did he continue on June 26th with reference to his implication in this matter?

A On June the 26th I do not have a recollection of talking to him specifically on this matter.

Q So it was from the 21st to the 25th, the period when you were taking his statements and confession?

A Yes, sir.

Q And what day was it that the question of the plea first came up?

A June the 27th, 1942.

The Attorney General. Those are all the preliminary questions I would choose to ask. I would now like to continue with the witness.

The President. You would what?

The Attorney General. I would like to continue with my examination of the witness.

Have you a motion now, Colonel Ristine?

Colonel Ristine. I think I have a motion before the Commission.

The Attorney General. I lost track of it.

The President. Will you please restate it?

Colonel Ristine. Yes, sir.

In view of the fact that the proposal of the plea and

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Presidential pardon was made on June 27th, in view of the fact that this witness and Mr. Johnstone continued thereafter to interrogate the witness and that this witness is now relating the occurrences that occurred following June 27th, we ask that he be not permitted to testify further and that the testimony heretofore given be stricken out; and for the further reason, if the Commission please, it appears that on June 24th a 254-page statement, covering four or five days, by these F.B.I. Agents, was prepared and signed by Dasch, and that that statement is not contaminated or illegalized by the proposal of a plea and a Presidential pardon, because it occurred prior to the Presidential pardon.

The Attorney General. May I ask one question more of the witness, so as to make it perfectly clear?

The President. The question you have reference to is to the days before the 27th?

The Attorney General. Yes.

Questions by the Attorney General:

Q The answers you gave this morning with reference to what Dasch told you related to what period of time? When did you interrogate him and when did he talk to you? What days did he talk to you? You have been testifying what Dasch told you. Now, when did he tell you this?

A A portion of that was told subsequent to June the 27th, 1942.

Q When?

A And a portion was told prior to June 27th.

Q What was told subsequent to June 27th?

A As I recall, the portion that was told subsequent to

June the 27th, 1942, deals with his attempts at being naturalized, his service in the United States Army, the Air Corps, and the marriage to his present wife on September the 18th, and his birth February the 7th, 1903.

3 The Attorney General. Addressing myself to the motion to strike, I cannot see how in any way it can be said it was induced by a promise of leniency, when it was suggested to him that he might plead guilty, and then I understand he said he would not do that. The material part of his confession--I think I am right in saying this--the material part of it in connection with the actual crimes charged was all told by him before the 27th. Subsequently other material was told by him also, after the 27th, but I cannot see how that was affected, because I cannot see that any inducement influenced him, he having turned down the plea, this sort of a plea, and said he would not do it, and then he went on and told the rest of his story. There is no suggestion of any impropriety in the case at all.

Colonel Royall. May it please the Commission, may I ask the witness a preliminary question touching on the matter of the admissibility of this evidence?

The President. Yes.

Questions by Colonel Royall:

Q All statements made by Dasch on June 25th were reduced to writing and signed by him, were they not?

A There was a stenographer present during the time the defendant Dasch was being interrogated.

Q Therefore the most complete and most accurate and only complete and accurate record of what Dasch said before the 27th

is embodied in this 254-page paper, is it not?

A There were some sidelines that he had made; one that I recall was the Umlege.

Q But that document is by far the most accurate statement of what he said before the 27th, is it not?

A Before the 27th?

Q Yes.

A I would think so.

Q It is considerably more accurate than your memory of what he said could possibly be, is it not?

The Attorney General. Now, I object.

Colonel Royall. No.

The Attorney General. I object. Counsel is not even sure that he took this statement. You have not asked him if he took it.

Colonel Royall. I am asking him to say--

The Attorney General (interposing). You are asking him about a conclusion as to whether one thing is more accurate than another. Anybody can conclude.

Colonel Royall. I will ask him again. I think the question is proper.

Questions by Colonel Royall:

Q Is not that stenographic report of what he said much more accurate than your recollection can possibly be as to what was said during those four days?

The Attorney General. I object. It is a mere conclusion. How can the witness say whether or not one thing is more accurate than another. That is for the Commission to decide.

Colonel Royall. If I asked him whether what somebody else

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said was accurate, yes, but this witness certainly ought to know whether his recollection is accurate. That is what I am asking him about.

The Attorney General. Ask him whether his recollection is accurate.

Colonel Royall. I am asking him if it is as accurate as the stenographic report.

The Attorney General. I object to that.

Colonel Royall. Well, I don't think the question is material. We will withdraw that for the moment.

Questions by Colonel Royall:

Q Now, Mr.-- what is his name?

The Attorney General. Willis.

Questions by Colonel Royall:

Q Mr. Willis, in your testimony that you started to give before lunch you were not purporting to give the entire substance of his statements made through the 25th, were you?

A The details. There were some irrelevant details in that statement.

Q But you were determining which you thought were relevant and which you thought were not, were you not?

A Pertaining to the defense, I am giving the admissions made by defendant Dasch.

Q And those that you thought were relevant, is that right?

A Those that I thought were relevant, yes, sir.

Q And you were leaving out those that in your opinion were irrelevant, is that right?

A Well, I could not remember --

The President (interposing). To what questions does this pertain? Does it pertain to questions that were put by the Attorney General?

Colonel Royall. There was a general question. He was just going ahead and narrating--

The President. Whose question was he answering?

Colonel Royall. The Attorney General's. He said, "Just tell the story," and now and then he interjected a specific question, but usually he said, "Go ahead with your story."

The Attorney General. I do not understand the purpose of this. This is just cross-examination of my witness. We have not come to the period of cross-examination. He has been simply cross-examining my witness about his evidence. I think he ought to do it in due time and place. I will never get anywhere if I am not permitted to proceed.

Colonel Royall. May it please the Commission, I would like to be permitted to say this about that. I am seeking to do this, in reply to what the Attorney General says: Here is a man who over four days of questioning by the F.B.I. has given a statement and signed what he says is a complete transaction. Instead of introducing that in evidence, which regardless of whether the witness says so or not is necessarily the most accurate and the most complete statement the witness has made-- instead of doing that they put an F.B.I. man on, who assumes, I am sure in good faith--

The President (interposing). That is not the question.

Colonel Royall. Yes, but I mean he assumes to select, sir, what part of that is relevant and what is irrelevant.

That is the point I am making.

The President. Yes, but could not you bring out that point on cross-examination?

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fls
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Gold.
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Colonel Royall. Possibly so, but the confession was in writing. It was reduced to a written instrument and was signed.

I do not know that the best-evidence rule applies, but it is certainly the most logical and satisfactory evidence for the Commission to consider. What we are really arguing is whether we are going to put in this accurate, complete stenographic record or let the witness select what he testifies about.

On that question there are only two considerations. One is the consideration of time, and that might be a very important consideration in some cases. But in this case it should not be a consideration when the charges are as serious as they are and when the length of that statement was undoubtedly the result of the F.B.I.'s own queries and questions. That is one possible motive--to save time.

The only other possible motive--and I am sure I am not saying this with any reflection upon the eminent Attorney General or upon the F.B.I., because it would probably be correct trial practice--would be to bring out those things that are most damaging and to get them before the Commission, leaving it for the cross-examination to go into the substance of the entire 254 pages. That might be a technical advantage for the prosecution, but if it is, it certainly does not commend itself to a sense of justice, it seems to me.

Why should not this case be tried upon that confession, just like every other case that I think any of us has ever seen tried where there was a written confession? I have never seen this written confession; I do not know what is in it. It is

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not my clients', but it may incidentally affect us, depending upon the ruling of the Commission.

Why should we follow the extraordinary course of putting on a witness and letting him select certain portions, just what he thinks is material, from what the man said in the case, and involving possibly his life and death, and not put into the record the complete facts when there is a signed and written confession made at the instance of the Government?

I think it is fundamental when you couple with that this fact. I want the Commission to consider this carefully. The evidence shows that after he signed that instrument, for several days they tried to get him to sign a much shorter one, which undoubtedly just selected only certain facts. I do not know whether it is consistent, even, and thus I haven't any opinion on that. But certainly the instrument which he refused to sign, and with promises, which I have never heard the equal of in a court in all my practice--I have never heard of any such promises made to anybody in all the cases I have ever tried--and then they were unsuccessful in getting him to sign it, and they give the witness the very paper that the defendant refused to sign in spite of those promises, and ask the witness to read it to refresh his recollection, and the witness says that that embraces things said before the promises and things said after the promises--we have just started into it. Of course, he just mentioned a few matters, but he was going pretty well along with it. He had covered less than twenty percent of it before the noon recess, so some confusion as to what was said before the promises and what was said after them will undoubtedly run through the course of the entire testimony.

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All that Colonel Ristine wants and all that I want is, to the extent that this may affect these other clients, regardless of whether it takes a little time or not, is to put in evidence the stenographic, accurate report of what the man said and signed and try this case just as you would any other case where a man's life is at stake.

Colonel Ristine. If the Commission please, I would not say that there was an established law that where a conversation respecting a matter of this kind has been taken down stenographically and transcribed and signed the best-evidence rule would apply in that instance, but I say that our sense of justice would dictate that the best-evidence rule in that case should be applied, because it is perfectly obvious that the stenographic report of the questions and answers and of what was said would be far more accurate than the recollection of any witness, particularly since it covered a period of several days.

I think that the Commission should apply that rule in this case, even if it does take time--and I understand that that is the only objection of the Attorney General to offering the signed statement.

The Attorney General. I have not made any objection.

Colonel Ristine. Even if it does take time to read it--and I think he said it would take several days to read it--I sincerely say that if it does take several days to read it, it should be done in this case.

The Attorney General. I think we have got very much aside from the issue. This is a motion to strike certain admissions made by the defendant; it has absolutely nothing to do with a long signed statement which has not yet been offered and which

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has simply been referred to not in the record but by counsel.

Colonel Royall wants me to try my case according to the way he wants it done. He wants me to put on this long signed statement. I propose, with the Commission's permission, to try the case in exactly the way I think it ought to be tried. I have now asked this witness whether or not Dasch made certain admissions to him, and he is answering that question.

This is a motion to strike. It has nothing to do with the confession, which is not in evidence at all. It is simply a narrow ruling as to whether or not there is anything objectionable to this witness saying what Dasch told him under the circumstances you have heard.

I think that that is all I have to say about it, and I should prefer to be permitted to continue the case in my own way and not as Colonel Royall or anyone else except the Commission suggests.

Colonel Royall. I am not trying to tell the Attorney General how to try his case, but that remark does not deter me from objecting to testimony that I think is clearly incompetent, and his desire to try the case as he wants to does not give him blanket authority to violate the rules of evidence any more than it would give me the authority.

I think the Attorney General also misconceived the objection, as I understood it, of Colonel Ristine. He was not only moving to strike what had already been said by this witness, but he was also objecting to further testimony from this witness.

The Attorney General. I understood all that. If you dig below the surface of this case, it is perfectly obvious what the defendants are trying to get this situation into. They can

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put Dasch on as their witness, and he can talk all he wants and refer to anything he wants. But they are trying to force us to put in a confession of Dasch's and keep Dasch off the stand. That is the obvious tactics behind this. When that is clear, it seems to me that the nature of the objection can be more easily understood, and it seems to me that all these admissions are completely appropriate under the circumstances.

The President. Is there anything further from either side? Does any member of the Commission care to be informed further on any other subject?

A Member. I think it has been discussed completely.

The President. The Commission will close.

(At this time the Commission was closed. When it reopened, the following occurred:)

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The President. The Commission is open. The Commission will make a statement and then will ask definite questions of the counsel.

From the evidence it would appear that there were two periods: one, prior to June 27, and the other after June 27, the date the hope of reward was alleged to have been given the defendant. Do the counsels object to the witness answering questions based on statements made to the witness by Dasch during the first period as stated above; and, in counsel's opinion, is there a difference in the rule to be applied between the two periods?

The Commission is anxious to be informed by the distinguished counsel on both sides.

Colonel Ristine. With respect to the latter period, subsequent to June 27, the rule which would bar conversations during that period is governed by the hope of leniency, or reward, and should be excluded on that ground.

With respect to the period prior to June 27, there was a stenographer present during the interrogation, who took down in entirety the questions and answers, and they were transcribed and approved; each page of 254 pages was initialed by the accused and signed by the accused, as being a correct transcription of the questions and answers asked and made; and oral testimony, in our opinion, should be excluded with respect to those matters, because the best evidence is the transcribed, written, signed statement as to what transpired, and we think the best evidence rule should be applied, and if the prosecution desires to avail itself of what was said during that period, it should offer the transcript of the stenographic notes which was approved and signed.

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Does that answer the President's question?

The President. I am very glad to have your opinion, but I should also like to have the opinion of the Attorney General and of the other defense counsel if they care to reinforce or supplement or complement the opinion given.

Colonel Royall. May it please the Commission, I do not particularly care to answer that question, unless you want me to, because, although I have an idea about it and would be glad to give it if the Commission wants it, I believe I would rather, for the present at least, let the Attorney General speak.

The Attorney General. May it please the Commission, with respect to the question whether counsel has any objection to the witness testifying as to what was told him before the 27th of June, I will answer it in this way. I have an objection, because I think the witness is entitled to answer on admissions or statements made to him at any time; but I will also say, as a practical matter, that should the Commission sustain the motion to strike I will then, of course, ask the witness to testify what he heard before the 27th, and then I will call another witness and ask him to testify as to what he heard before the 27th.

My view is very clear, first, that all of the admissions or statements or conversation or talk by Dasch in the presence of this witness, whenever made, under the circumstances testified to, are so clearly admissible that I will press my point on that.

With respect to the confession. It has not been offered in evidence; it is not before you. No questions have been

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raised about it, and I know of no rule that excludes a witness from saying what he heard a defendant say in his presence, irrespective of whether thereafter a confession was signed by the defendant. And you will note that there is no evidence of any confession having been signed at any time.

The President. May I ask your opinion, for the information of the Commission, or your comment, if you care to make it, on the matter of the best evidence? That is, this so-called stenographic report that has been mentioned by counsel for the defense.

The Attorney General. I do not know of any best evidence rule which requires a confession dealing with certain matters to exclude statements which may or may not be covered by the confession. Moreover, I think that the very purpose of the commission which authorized you to sit was to meet precise circumstances of that kind. If, in each instance where these matters arise, you are to apply the theoretical best evidence rule, it seems to me that you disregard the very basis of your commission, which says (reading):

"Such evidence shall be admitted as would, in the opinion of the President of the Commission, have probative value to a reasonable man."

Under that authority would this Commission wish to exclude statements made by one of these defendants on the ground that that would not have probative value to a reasonable man? I should think not.

The President. My question was not fully answered. I did not refer to that. Of course the Commission is not informed nearly so well as either of the counsels as to what

is behind all this. We are trying to confine ourselves to what is before the Commission. Reference has been made to stenographic notes that were taken of these conferences, in which the witness took part. He was one of three, I believe, who were present. Defense counsel refers to the stenographic notes. Is there a difference between those stenographic notes and a confession of the defendant Dasch which may be in the possession of the counsel? I am just trying to see whether there are two papers involved, a signed confession that has been referred to, and then there are stenographic notes of this investigation that have been referred to. Are they the same?

The Attorney General. They are not. Here (exhibiting) is the signed confession of Dasch, some 254 pages, which has not been introduced. It has merely been referred to. In addition to that, I think I am correct in saying--and the witness will correct me if I am wrong--that there are certain stenographic notes of what Dasch said from time to time, some of which notes cover what the witness has been referring to. But that, it seems to me, may it please the Commission, is a matter of the weight that should be given to the evidence. It is not a matter of admissibility. Why should a man be excluded from testifying as to admissions made by a defendant? It is a matter of the weight that you want to give to the evidence. After you hear it, if you do not believe it, then that affects your decision.

The President. There are rules of evidence, however, that govern any like case.

The Attorney General. Yes. I know of no rule of evi-

dence in any court which excludes a witness from testifying to what he heard a defendant say, except such rules as to duress and matters of that kind, with which we are not concerned here. I know of no other rules which exclude that.

There can be absolutely no question, it seems to me, about the statements made before the 27th. I am perfectly clear in my view of the law that the fact that a written confession was signed does not prevent the witness from saying what the defendant said.

There is of course a rule of law that you cannot testify as to a portion of a confession; but that is an entirely different matter. Here, on one side, is a confession covering a number of matters. On the other side are statements, some of them covered by this confession and some not, which were made by the defendant Dasch to this witness.

It seems to me that it is not, therefore, a matter of admissibility, but a matter only of the weight of the evidence.

The President. Are there any further remarks on the part of defense counsel?

Colonel Ristine. Yes, sir. If the Commission please, it is my understanding--and I would like to be corrected if I have a wrong impression--that the written, signed confession was written up from the stenographic notes of what transpired during several days of interrogation.

Is that correct, Mr. Witness?

The Witness. Yes.

Colonel Ristine. If that be correct, I take it there can be no dispute in the minds of men but what that would be the best evidence of what was said; and no man and no group

of men could recall as accurately what was stated during those four or five days as the written, signed confession taken at the time of the occurrence of the facts. Therefore I say that the signed confession, since it is in existence, should be the one, in accordance with the proclamation and direction of the President, which this court should insist upon.

The Attorney General. That is precisely my point. In other words, that more weight should be given to a signed confession than should be given to the oral statements. That is a matter of the weight and the effect of the evidence. But to say that you cannot even hear a witness who will testify to what the defendant said seems to me to be an entirely different problem. I think it clearly should be admitted.

Colonel Royall. Colonel Ristine has suggested that I supplement his remarks. I hesitate to do that, for this reason. As to the evidence after the 27th I am clear in my opinion that it is inadmissible in this record. I cannot truthfully say to the court that as I understand the best evidence rule it applies to the evidence before the Commission. I did not want to make that statement, because it is in derogation of his views--

Colonel Ristine. I think that concurs with my view.

Colonel Royall. I do not think the best evidence rule applies to a confession. I think the word "confession" has been used a little inaccurately, maybe by more than one of us. A confession does not necessarily mean a written instrument.

The President. There is a difference still in my mind about the two papers involved; that is, the stenographic notes of the investigation and the signed confession that I am told

about.

Colonel Royall. They are apparently the same, from what the witness has just said. I think there is no best evidence rule to exclude what happened before the 27th. There was nothing happened on the 26th, I believe he said. So it is the 25th and 27th that are involved. I do think this, however. I think it is clearly the rule that as to those matters before the 27th, if the witness is permitted to testify as to those--that question was not raised before the Commission closed because they had not offered to confine this evidence before the 27th, and that is the reason I had not expressed that view before--but if the Commission does permit the witness to be examined as to the statements before the 27th, then, as I understand the rule on cross-examination--and this is expressly provided in the Court-Martial Manual--Dasch can be asked about everything else that was said during the days which his testimony covers, or such parts as you want to inquire about. I think that is clearly the law. As a practical matter it seems to me the simplest way is to confine the matter to the written confession, the stenographic notes; but I cannot truthfully tell the court that I do not think that the witness cannot be asked about those matters before the 27th, because I think he can, and I think the only disadvantage is that then he will be open to cross-examination on the other. I suppose the Attorney General recognizes that as a possibility.

The President. That helps the Commission. Has the Attorney General anything further, after the remarks of counsel?

The Attorney General. I have nothing further; thank you.

The President. If there is no objection on the part of any member of the Commission, the Attorney General will proceed with the witness, confining himself to that period prior to June 27th.

The Attorney General. May it please the Commission, the motion was one to strike all the evidence already given; so I suggest that you may wish also to rule on the motion to strike all of the evidence which this witness has given.

Colonel Royall. May it please the court, may I suggest to the Attorney General that as a practical matter, the simplest way to solve the problem, in the light of the Commission's ruling, would be to start the witness over?

The Attorney General. No; I would like to have the Commission rule on the motion to strike, and then I will proceed.

Colonel Royall. Of course it will just have to strike the part before and the part after, and that would be complicated.

The President. Subject to objection on the part of any member of the Commission, the President of the Commission rules that the motion of defense counsel to strike is not sustained. The Commission, however, will consider, in so far as the evidence has already been given, the contention of the defense counsel in considering the evidence before and after the 27th as already entered in the record.

The Attorney General. And I take it, Mr. President, that you wish me hereafter to confine the witness to testimony before the 27th?

The President. If you please; and so far as it goes

naturally, that you phrase your question so that that will be done.

The Attorney General. Yes, sir. With the permission of the Commission I would like to let Agents Griffin and Drayton, who have already testified, go; and counsel for the defendants have agreed that they need not be kept any further.

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The President. Proceed, Mr. Attorney General.

Questions by the Attorney General:

Q The questions which I will now address to you with respect to Dasch's statements to you will be confined to such of the statements as were made before the 27th of June.

A Yes.

Q Bearing that in mind, will you now continue with the story of what Dasch told you? Do you remember the last thing to which you testified?

A I was testifying about when he returned to Germany and he was in Stuttgart.

Going back to the information that was admitted in my presence prior to June 27th, 1942, the defendant Dasch admitted that he went to a sabotage school at Quents, Germany, which is near Brandenburg, Germany. Present at that school were Werner Thiel, who was known to him as John Thomas; Heinrich Heineck; Neubauer, who was known to him as Nicholas--Heineck was known to him as Henry Kaynor--Edward Kerling, who was known to him as Edward Kelly; Quirin, who was known to him by the name of Quintas; Ernest Peter Burger, who was known to him by that name, and Herbert Haupt, who also was known to him by that name and another name known as Bingo.

Q Did Bingo have any other name?

A That was Haupt.

Q I beg your pardon?

A Also at that school were Ernest Zuber and a man named Scotty and a person named Dempsey, who was also known as Billy Smith, and Braubander. Smith or Braubander, Zuber and Scotty did not complete the course. Defendant Dasch was

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a leader of one group, which consisted of Ernest Peter Berger, Henry Kaynor, also known as Heinck, and Richard Quirin or Richard Quintas. Edward Kerling, known as Edward Kelly, was the leader of the second group, which consisted of Haupt, Neubauer or Nicholas, and Thiel.

At this school they were given instructions by Professor Koenig or Dr. Koenig and Dr. Schultz. They were given instructions in the use of explosives, high explosives, secret inks, and they were also given pistol practice.

Q Did Dasch say to you who was in charge of this school?

A Lieutenant Kappe was the person who had--if I may say here, that was subsequent to the 27th.

Q I wanted you not to testify with respect to any evidence given you after June 27th, so I think that answer should be stricken out.

The President. That will be stricken out.

The Witness. About Lieutenant Kappe?

The Attorney General. Yes.

The Witness. Following this school they were given several days' vacation and had to reconvene May 12, 1942, in Berlin. However, Dasch and Kerling reconvened on May the 11th, at which time they were given instructions, additional instructions, in the use of secret inks. While taking this instruction they wrote on a white handkerchief, each wrote on a separate white handkerchief various addresses in secret ink.

Questions by the Attorney General:

Q Did Dasch show you the handkerchief; did he identify it?

A The handkerchief that Dasch had was shown to me in

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his presence.

Q And he identified it as the handkerchief that you describe?

A Yes.

Q All right. Go ahead.

A On May the 12th, 13th, 14th, and 15th the group was taken to various points, one being to railroad shops, where they were given additional instructions as to points vulnerable to sabotage, among locomotive engines and trains.

Q Where were the railroad shops?

A As I recall, those were in Berlin.

Q Yes.

A They were also taken up the river and they were shown locks and they were pointed out points vulnerable to sabotage as to the locks. They went, I think on May the 14th and 15th, to a plant of the I. G. Farbenindustrie, and there they were given instructions as to the vulnerable points in the light metal industry, aluminum and magnesium plants. They were pointed out that electric power, the source of power, was the most vulnerable, and should be handicapped, if possible.

Q In that connection do you remember whether Dasch told you before the 27th of June whether or not they had instructions with respect to the sabotage of certain objectives and what those instructions were?

A Yes, sir. They had instructions to sabotage the light metal industry. Dasch's group had the Alcoa plant in Tennessee, one in East St. Louis, and, I believe it was, the C. & O. Railroad at New York, the bridge.

Q Did you say the C. & O. bridge at New York?

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Colonel Ristine. That is what he said.

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Questions by the Attorney General:

Q What else?

A They were also to dynamite or throw bombs, rather, in department stores operated by Jews to create consternation and panic and to do any other acts of sabotage that they thought advisable. Also the group headed by Kerling was to attack the cryolite plant in Philadelphia, the Hell Gate Bridge.

Q The plant of what property?

A That is all I know, just the cryolite plant.

Q Yes.

A Hells-Gate Bridge. I believe it was the Pennsylvania Railroad Station in New Jersey, Newark, and they likewise were to practice sabotage wherever it would create panic or wherever they thought it would do the most good.

Following the tours that they took to Bitterfeld, Germany, where the I. G. Farbenindustrie is located, and also at Aachen, Germany, they returned to Berlin. There they were given a day or two off, and reconvened. They left Berlin and went to Paris. From Paris they went to Lorient, France.

Q Did Dasche tell you what Lorient was?

A I have no recollection that he did say what it was. At Lorient, France, Kappe, Lieutenant Kappe, turned over to Dasch some money belts containing money for each of the men in his group. Incidentally, there was one other person who was supposed to come in Dasch's group, a man named Swenson. However, he contracted a venereal disease in Paris and did not come over with them. Dasch was given by Lieutenant Kappe a money belt for each of the men in his group and also was given

a suitcase that he had previously furnished to Kappe containing eighty thousand dollars. They were supposed to leave Lorient, France, on the night of May 26, 1942. However, they did not leave until May the 28th, 1942.

Q Now, before you describe the trip, I wish you would go back to the sabotage school and let me ask you whether or not Dasch described to you what occurred at the sabotage school.

A They were given instructions in the preparation of high explosives from ordinary drugstore chemicals. Also they had a proving ground where they would test out various explosives. They had a pistol range. They went out and had pistol practice on that range.

Q What other if any instructions or lessons were they given in connection with their mission?

A They also had instructions in the use of secret inks. On the week ends Lieutenant Kappe, with one Reinhold Barth, would come out, and at that time--

Q You are confining yourself to what took place or what was told you before the 27th of June?

A Yes, sir.

Q All right.

A Reinhold Barth and Lieutenant Kappe would instruct the groups to have some fictitious story which they could use to prevent their being identified as saboteurs, in the event they were picked up while in the United States.

Q Did Dasch tell you whether or not he had seen Lieutenant Kappe before going to the school?

A My recollection of that is that he told me how he

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met Lieutenant Kappe, but that was subsequent to June the 27th.

Q I see.

A On the night of May 28th Dasch, in company with Burger, Quirin, or Quintas, and Heinck or Kaynor, left Lorient, France, aboard a German submarine.

Q What if anything did they take with them on the submarine?

A It is my recollection that Kappe had previously put-- Dasch stated that Kappe had previously put four boxes containing high explosives. They left on the night of May 28th and proceeded by way of submarine from Lorient, France, to Long Island, where they landed on the early morning of June the 13th near Amagansett, Long Island.

The submarine while about 400 meters from shore and on the surface put out a rubber boat. The four boxes of explosives were put into the boat. Burger, with the money bags and the clothes, the valise, sat in the boat to the rear, as I recall; also Quintas or Quirin, and Kaynor or Heinck, and Dasch, and two German sailors got into the boat. They paddled ashore and on landing Dasch had a long paddle and he states that when he felt bottom he rushed from the boat and helped pull it to the beach.

He went up on a little dune, or approached--went up on the beach to get his bearings. He stated that he saw lights. The rest of the boys had taken the explosives and clothes out of the bag, and put them on the beach, and Dasch saw a person approaching whom he recognized to be a sailor or Coast Guardsman. He went down and told the--he approached this Coast Guardsman and told this Coast Guardsman--he asked the Coast Guardsman

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where he was, whether it was Southampton, I believe, and the Coast Guardsman stated he should know where he is. Then Dasch asked him again where he was and he said somewhere near Amagansett, and someone approached Dasch and Dasch told him to get back.

At that time Dasch told the Coast Guardsman, "You have got a mother and a father and you take this," and he gave him some money, which he thinks to be or says to be a total of three hundred dollars.

Dasch then returned to the beach or to the rest of the group and he stated he had not taken his clothes off, he wanted to get his clothes. The others had changed, and he located his clothes by the time they were going out there and deposited them and left them there, so he and Quintas, I believe, went and got his clothes and he put those on.

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Q You say "his clothes." What do you mean by "his clothes"?

A He had brought with him certain clothing to wear. They wore on the submarine what they termed as dungarees, and he had with him civilian clothing, and he went and changed from the dungarees to the civilian clothing.

After the change of clothing, and the boxes were buried, he went up toward a road, and they hid there in the bushes until about daybreak. Then they proceeded by foot to Amagansett. At Amagansett they purchased a railroad ticket to Jamaica, and at that time Dasch instructed that he and Burger would go together and that Quintas and Kaynor would remain together.

Also, before they parted into two groups, it was agreed among them that they would meet that afternoon at three o'clock in the Horn and Hardart restaurant on the balcony or in the balcony.

So, Dasch and Burger at Jamaica--the train arrived there, as I recall, he states, around nine o'clock--they bought civilian clothing and proceeded from there to New York City, where they registered in the Governor Clinton Hotel, Dasch being given room 1414, and Burger room 1421.

Q Is that all?

A That afternoon at three o'clock they met Quintas and Kaynor at the Horn and Hardart restaurant and agreed that they would meet the next day at Grant's Tomb--or at the Swiss Chalet restaurant at one o'clock or if not then, at Grant's Tomb at six o'clock.

Q What happened then?

A They made the arrangements to meet the next day.

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That afternoon Burger and Dasch went shopping and bought additional clothing. Then, I believe it was that evening--no, the next day at six o'clock they met Quirin and Heinck at Grant's Tomb, and that was at six o'clock in the evening.

Then they returned--no, they--yes, they rode on the bus a while, and they went to a restaurant that he knew the owner of, a man by the name of Danny Doyle, and then they returned to the hotel.

The next day, Monday, he went shopping, and during that evening he went to a club of which he had been a member--a waiters' club--and there he played cards with another waiter until, I believe it was, Wednesday.

Q What happened on Wednesday?

A Then, Wednesday he left New York, and he came to Washington, D. C. He registered at Washington, D. C. in the Mayflower Hotel, and that evening he went to--he had dinner with someone, or not with someone, but he had dinner at a restaurant and there saw a waiter whom he thought he recognized. That evening he contacted this person he found out to be a man by the name of Louis Martin, whom he had previously known.

The next day he made a telephone call to, I believe it was, the Government Information Service, and there he was put in touch with--not put in touch but given the names of the secret service or military authorities, and also the F.B.I. He tried to get Colonel Cramer, and being unsuccessful, he called the Federal Bureau of Investigation, at which time he got in touch with Mr. Traynor.

Q With whom?

A Mr. Traynor.

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Q You said that Dasch showed you a handkerchief on which he stated there was secret writing, did you?

A That handkerchief at that time was in the possession of Mr. Traynor.

Q Well, you had it with Dasch?

A Yes, sir.

Q And you showed that to Dasch. What did he say about the handkerchief?

A He said at that time while they were studying the use of secret inks that Lieutenant Kappe told them to put down certain addresses, one address being an address in Lisbon, Portugal--Maria de--the third name was illegible--Lopez. That was an address.

Incidentally, at the time they departed they were given matches, the tip of which bore some compound--chemical compound--that was a secret ink. They were to take this match and write on a piece of paper a message. He says the message was to contain--the original message was to contain--information concerning the necessary papers that an agent should have in this country--for example, the alien enemy registration. One must have that with him at all times. Also, a Selective Service registration card.

Q Did Dasch have those with him, did he say?

A I have never seen any card that he had. He stated that he lost his social security card on the train between Paris and Lorient, France.

Q What else did he say about the handkerchief.

A Also, the handkerchief contained addresses whereby he could get in contact with Edward Kerling, in the event he

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and Kerling became separated from one another here or lost contact with one another. They were to meet on July 4, 1942, in Cincinnati. In the event the meeting failed in Cincinnati or they otherwise lost contact with one another, he was given a secret address whereby he could get in contact with Kerling.

Q Did Dasch tell you what he was instructed to do when he first got to America?

A I have no recollection of that.

Q Did he tell you whether he had any instructions other than you have testified to as to what he was to do when he got over to America?

A This was the first group of saboteurs that had been sent over by the German high command, and they were to establish a headquarters for saboteurs in the United States.

Q Do you mean Dasch and his three companions? When you say "they," whom do you mean?

A Well, as I understood it, that included not only Dasch and his three companions but also the group of which Kerling was head.

Q What were they to do?

A They were to establish a headquarters for saboteurs in the United States.

Q Did he say where they were to establish them?

A That was left up to his own judgment, so far as I can recall. He mentioned this boy Swenson, the one that was left behind, indicating that Swenson appeared to be a rural type boy, a farmer, and that he thought probably they could get a farm operated by Swenson.

Q Did Dasch state the manner in which he was to establish the contact?

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A Is that as to the headquarters for the sabotage school?

Q The question was whether Dasch stated the manner in which he was to make the contacts in this country.

Colonel Royall. With whom?

The Attorney General. He has not said.

The Witness. Dasch stated that it was suggested that if any likely suspects or friends of these various individuals appeared to be likely recruits, then to endeavor to recruit them; but no specific names that I recall were mentioned as recruits.

The Attorney General. I will ask to have this handkerchief marked for identification.

(A handkerchief was marked as Exhibit P-98 for identification.)

Questions by the Attorney General:

Q Is this the handkerchief with some writing that Dasch was shown and spoke of?

A This is a handkerchief similar to the one that Dasch had. Whether it is the same one--I would like to see the writing. I didn't identify that handkerchief.

Q You did not identify it?

A No, sir, I didn't.

Q Could you tell, if you took it out, whether it is the same one?

A It appears to be the initials there.

Q Let us take it out and look at it.

(The witness is shown a handkerchief that has already been marked.)

Are there initials on the handkerchief?

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A Yes, sir.

Q What are they?

A B. S., I believe.

Q Can you identify this?

A This looks to be the same handkerchief. The initials are the same--B.S.--or a German S that appears to be-- or I was told it was.

Q You were told what was what?

A That this initial is B.S.--the one in the corner. Other than that, that is the only marking that is visible at this time.

The Attorney General. I think that is all.

The President. We shall continue the proceeding until six o'clock.

The Attorney General. Very good, sir.

You may cross-examine.

CROSS-EXAMINATION

Questions by Colonel Ristine:

Q Have you attempted to relate the statements made by Dasch in the language used by Dasch?

A No, sir.

Q Have you attempted to relate all of the statements that Dasch made respecting the matters about which you have given testimony?

A He gave information on other topics besides the one that I have related.

Q Well, have you attempted to give all the statements he made respecting the matters about which you have given testimony?

A No, sir.

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Q Then, you have given only a short summary of what you now recall Dasch may have said or which you concluded he said in these various interrogations?

A It is no conclusion; it is a fact. It is a narrative of the admissions made by him in my presence.

Q Well, the very question of whether they were or were not admissions is a conclusion on your part, is it not?

A Well, I think that that is true.

Q You have not attempted to state any of the language used by Dasch in these statements?

A Well, may I inquire what you mean by "the language"? Word for word?

Q Yes.

A No, sir.

Q Then, you did construe what you thought he intended to convey by the language he used in your giving of testimony here; is that correct?

A I don't quite follow. He said that he went to Lorient, France and sailed on the 28th day of May, 1942. I may have said that he sailed on the 28th of May, 1942. It is just a narrative of what he told me; not in the same language that he told me.

Q How did Dasch happen to be in the F.B.I. office?

A He said that he telephoned the F.B.I. office and was referred to Mr. Traynor.

Q Did he do that voluntarily and of his own free will and accord?

A I have no way of knowing that other than what he said.

Q Well, did he so state to you?

A Yes, sir.

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Q Did you verify that statement?

A I beg your pardon?

Q Do you know that statement to be true by any verification on your part?

A Do I know the statement to be true that he called this office?

Q Yes.

A He was here at the time I first saw him on June 21.

Q Well, don't you know as a matter of verification on your part that Dasch did voluntarily and of his own free will get in touch with the F.B.I. to give them this information?

A So far as I know, that is true.

Q During the entire interrogation in which you participated, he did, insofar as he could, answer any questions which the F.B.I. agents asked him as freely and as fully as he could; isn't that correct?

A That is correct.

Q He did it under the conviction that he was aiding and assisting this Government; is that correct?

The Attorney General. Wait a moment. I object. How does he know what in the mind of Dasch when he did it? How does he know what his convictions were? Let him say what Dasch stated and what he stated. I think that would be a proper question. I object to this question.

Colonel Ristine. If the Commission please, we might have the witness state it. I think we do form definite impressions from talking with a person.

The Attorney General. You did not ask the witness his impression; you asked him Dasch's conviction.

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Colonel Ristine. Well, if that is this witness' conviction of the conduct of Dasch.

The Attorney General. I object.

A Member. I think you might ask the question in the other way.

The President. There is objection to the question as he put it. The objection is sustained as to that particular way of asking the question.

Questions by Colonel Ristine:

Q What impression did you form from interrogating Dasch about the manner in which he responded as to whether or not Dasch considered he was aiding and assisting this Government in a very vital matter?

A Dasch stated that he was, and he answered questions voluntarily and freely.

Q What conclusion did you form from that as to whether he was really aiding and assisting?

The Attorney General. I cannot help but object.

The President. I will rule on that. If there is no objection on the part of the Commission, that question will not be asked in that form.

Colonel Ristine. Yes, sir.

Questions by Colonel Ristine:

Q Did Dasch get in contact of his own free will and accord with the F.B.I. in New York, before coming to Washington, by telephone?

A He says he did.

Q He also explained why he preferred giving the facts to the F.B.I. office in Washington rather than in New York, where he first contacted the F.B.I.?

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A He says that it was too big; that it should come to Washington.

Q Is that the only reason he gave, that you recall?

A That is the only one that I recall, yes, sir.

Q Did he state to you or in your presence that he had been informed in Germany that the secret police of Germany had constant observation of the F.B.I. offices everywhere except in Washington, and that for that reason he wanted to give this information to the Washington office?

A I have no recollection that Dasch ever made such a statement.

Q Do you recall a statement Dasch made respecting a conversation he had with the Coast Guardsman on the coast?

A Yes, sir.

Q Would you tell us what you recollect of that statement?

A My recollection of that is that as Dasch was going up the beach, he saw this figure coming toward him, and he recognized it to be a Coast Guardsman. He approached this Coast Guardsman; and they had instructions if they were to see anyone to take that person and subdue him and turn him over to the German sailors, who would take him back to the submarine, and this subdued person would be taken care of by the two sailors and the other members of the German submarine.

He saw this boy, and the thought occurred, Should he turn him down or take him to the two sailors to subdue him; and when he talked to the boy, he made inquiry as to his whereabouts, and the sailor boy or the Coast Guardsman told him he was near Amagansett.

Then Dasch asked--told him, rather, "You have a father and a mother, and you haven't done anything wrong," or something to

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that effect, and at that time gave him some money and said, "Here, take this," and he didn't think at first that he had given the boy enough, and he went back and gave him enough to make, so he says, three hundred dollars.

At that time he asked the boy to turn his flashlight on the money so he could count it.

Q Was there any further conversation that he related?

A Oh, yes, sir.

Q Did he say anything about having told the Coast Guardsman to look at him?

A Yes, sir.

Q Tell us about that.

A He told the Coast Guardsman--he said, "Take a good look at me. You will hear from me in Washington."

Q Did he say how many times he asked the Coast Guardsman to look at him and what he did when he asked him to look at him?

A He told the Coast Guardsman to look at him at the time he was giving that money and they had the flashlight out.

Q Do you remember his stating that he took his cap off and used the flashlight when the Coast Guardsman looked at him?

A My particular recollection of that--at first he didn't mention that. That question was asked him, and then he says, "Yes, I took my hat off and turned my head down and said, 'Take a good look.'"

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Q And the flashlight was used in that conversation in looking at him?

A According to Dasch; yes, sir.

Q And he then stated that you would see him later in Washington?

A "You will hear from me later from Washington."

Q Did he tell you at what time in France or Germany he formulated the idea that he would not go through with this plan when he got to this country, but would contact some person in authority about the matter?

A I don't recall that he mentioned any exact date.

Q Could you give us some idea of the time?

A Yes, sir. To the best of my recollection, it was some time during the latter part of November of 1941 or the early part of December of 1941.

Q Would you tell us what he said in connection with that, as you recall it?

A As I recall it, that was all said subsequent to June 27, the explanation of it.

Colonel Ristine. I do not have any objection to his relating it, but I think probably it would be a waiver of the objection which I made, so I will not press the matter.

The Attorney General. All right.

Questions by Colonel Ristine:

Q Did he tell you that he had any understanding with a member of the group before they came to this country?

A He has never made such a statement.

Q What did you understand my question to be?

A That he had an understanding with a member of the group before he came to this country.

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Q Yes. What is your idea of what understanding I had in mind?

A A meeting of the minds, that they had some definite understanding.

Q You do not mean to state that he did not discuss what the four members of his group and the other group were supposed to do when they came over here, do you?

A You asked me if he had had an understanding with a member of his group prior to coming over here, and I replied that he never made any statement to me to that effect.

Q Did he talk to you or to anybody in your presence about any conversations he may have had with a member of his group?

A Do you have any particular instance in mind? He talked with the members of his group on several occasions.

Q Did he tell you about taking any walk while he was attending school over in Germany? I mean, classes.

A Yes, sir. I recall one instance. He said he took a bicycle over to a nearby aviation plant and wanted to go in, but he could not because it was guarded, and he walked around.

Q Did he tell you about any walks he had with any members of the school or any conversations he had with them?

A If I knew that you wanted to find out--he was with members of his group. They attended classes there.

Q What did he tell you about the hardships that he had undergone in Germany?

A The hardships that he had undergone?

Q Yes; that he had been subjected to.

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A Well, I don't know that he mentioned any particular hardship other than the shortage of food there. He could not eat all of the food he wanted to eat. They had rationing cards. He had some American clothing with him. I believe that he made mention of the fact that hot water was a bit scarce. But other than those three or four things, I have no recollection of any other hardships that he mentioned.

Q Did he tell you that he was very desirous of getting away from Germany in order to fight the ruling powers of Germany?

A Yes, sir; he made that statement.

Q Did he tell you that he saw in this opportunity to come over with this group which he did come over with the fulfilment of that desire on his part?

A Yes, sir.

Q And that he went to this school in order to carry out that purpose in his mind? Did he tell you that?

A To carry out the purpose to come over here?

Q To get away from Germany, so that he could fight the ruling power of Germany.

A Yes, sir; he made that statement.

Q And did he tell you that because he never intended to carry out any of the plans of his group he did not pay much attention to what he was being taught over there?

A Yes, sir; he made that statement.

Q Did he tell you that he realized when he did not overpower the Coast Guardsman that he was violating orders of his superiors?

A Yes, sir. As I stated a while ago, he had instruc-

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tions that he was to subdue anyone and turn him over to the sailors who would take him to the boat.

Q And he would not do that and did not do that; is that right?

A He would not and he did not do it; yes, sir.

Q Did he tell you who it was he talked to in the F.B.I. office in New York before coming to Washington?

A No. He made inquiry. He wanted to know if I knew or if we knew who it was.

Q Did he not tell you that he had called the F.B.I. office in New York City and advised them that he had very important information to give to the F.B.I. and that he was coming to Washington for the purpose of giving it to them?

A Yes, sir.

Q Did he tell you after arriving in Washington that he registered at the Mayflower Hotel?

A Yes, sir.

Q And that he called a Colonel in the Intelligence Department of the United States Army?

A Not immediately.

Q Well, I believe you said he called the Information Bureau?

A Yes, sir; the next day.

Q He got in late the day of arrival, did he not?
Did he tell you when he got in?

A Yes, sir.

Q What time?

A It was around 7 o'clock.

Q In the evening?

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A Yes, sir; in the evening.

Q And the next morning he called the Information Bureau?

A Yes, sir. It is my recollection that he called the Government Information Service.

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Q Did he tell you what he said to the Information Service?

A The exact wording, no. I do not recall, but he indicated that he had some information and I believe the person who was at the Government Information Service made inquiry as to its nature and he said that it was military espionage and at that time he was referred to the various organizations.

Q Did he tell what organizations he was referred to?

A Well, as I recall, it was the Army, the Military Intelligence, and the Federal Bureau of Investigation.

Q What did he tell you about what action he took after he received that information?

A He telephoned, I believe it was, the Army and made inquiry for Colonel Cramer.

Q Do you know whether he is in the Military Intelligence?

A No, sir, I do not know Colonel Cramer.

Q Now, go ahead and tell us what he said about his calls.

A Colonel Cramer was not in, and he then called the telephone number of the Federal Bureau of Investigation.

Q Go ahead and tell now what he said occurred.

A Well, he was referred to Mr. Traynor, Mr. D. L. Traynor, and told him he had some information and wanted to speak to someone, and Mr. Traynor said--this I am quoting from Dasch as nearly as I can quote him--Traynor said that someone would come out and get him and bring him down to the office.

Q Is that all he said about the telephone conversation with Mr. Traynor?

A So far as I recall, yes, sir.

Q Do you know who went out to accompany Mr. Dasch to

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the F. B. I. office?

A No, sir, I do not.

Q Did he tell you anything about Colonel Cramer calling him back?

A Yes, sir, he did.

Q Will you tell us what he said about that?

A Shortly after he had contacted the Federal Bureau of Investigation Colonel Cramer called him, and at that time he told Colonel Cramer that he had made an appointment or arrangements to see someone at the F.B.I.

Q Do you know whether he requested permission to talk directly with Mr. Hoover?

A That I do not know.

Q Did he say that he had requested permission to talk with Mr. Hoover?

A I recall no such statement.

Q Did he have a book with him when he came over to the F. B. I.?

A I was not here at the time he originally came to the F. B. I.

Q Did you see a book which he had had in his possession with some names of important people in Washington in the book, names and addresses, or at least names?

A Did I see a book that he had at the time he came over here?

Q Yes, that he had in his possession at the time he got in contact with the F.B.I.

A I do not know whether he had any book in his possession at the time he came over here, sir.

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Q Well, was a book shown to you that was alleged to have been in his possession, with the names of some prominent Washington people in it?

A I saw an address book that he had on his person.

Q Did it have the names of any important persons in Washington in it?

A It had one name that I recall.

Q And what name was that?

A Francis Biddle.

Q That is the--

A That is the Attorney General.

Q And you do not recall that Mr. Hoover's name was in the book?

A No, sir, I do not recall that Mr. Hoover's name was in that book.

Q Did he tell you that when he came to Washington he desired to get in touch with some person in authority and mentioned Mr. Biddle as being one of the persons recommended to him?

A He said that he wanted to get in touch with someone in authority in Washington. Mr. Biddle's name was given to him, as I recall Dasch's statement, on the evening that he appeared in Washington.

Q As being an appropriate person to get in touch with?

A Yes, sir.

Q The Attorney General is interested in whether you know who recommended him.

A Yes, sir, I do, according to Dasch's statement.

Q Yes. Who did Dasch say recommended him?

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A This waiter that he recognized, Louis Martin.

Colonel Ristine. There are, Mr. President, quite a few matters contained in the transcribed written document which I wish to make inquiry about. However, I think it will expedite matters if I spend tomorrow and tonight singling out the matters about which I desire to make inquiry, and I do not think of other matters that I desire to ask at the present time, before we adjourn.

The President. Anything further on the part of either side before we adjourn?

The Attorney General. Nothing further, sir.

The President. The Commission will adjourn until Monday morning at 10 o'clock.

(At 5:57 p.m., an adjournment was taken until Monday, July 13, 1942, at 10 o'clock a.m.)

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